

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

BRIGHT RESPONSE, LLC                   \*     Civil Docket No.  
   \*     2:07-CV-371  
VS.                                       \*     Marshall, Texas  
   \*       
   \*     August 3, 2010  
GOOGLE, INC., ET AL                   \*     8:30 A.M.

TRANSCRIPT OF JURY TRIAL  
BEFORE THE HONORABLE JUDGE CHAD EVERINGHAM  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF:     MR. ANDREW SPANGLER  
                              Spangler Law  
                              208 North Green Street  
                              Suite 300  
                              Longview, TX     75601  
  
                              MR. MARC A. FENSTER  
                              MR. ANDREW WEISS  
                              MR. ADAM HOFFMAN  
                              MR. ALEX GIZA  
                              Russ, August & Kabat  
                              12424 Wilshire Boulevard  
                              12th Floor  
                              Los Angeles, CA     90025  
  
                              MR. DAVID M. PRIDHAM  
                              Law Office of David Pridham  
                              25 Linden Road  
                              Barrington, RI     02806

APPEARANCES CONTINUED ON NEXT PAGE:

COURT REPORTERS:     MS. SUSAN SIMMONS, CSR  
                              MS. JUDITH WERLINGER, CSR  
                              Official Court Reporter  
                              100 East Houston, Suite 125  
                              Marshall, TX     75670  
                              903/935-3868

(Proceedings recorded by mechanical stenography,  
transcript produced on CAT system.)

APPEARANCES CONTINUED:

FOR THE PLAINTIFF: MS. ELIZABETH A. WILEY  
The Wiley Firm  
P.O. Box 303280  
Austin, TX 78703

MR. PATRICK R. ANDERSON  
Patrick R. Anderson, PLLC  
4225 Miller Road  
Building B-9, Suite 358  
Flint, MI 48507

MR. JOHN C. HUESTON  
MR. ADAM S. GOLDBERG  
Irell & Manella, LLP  
840 Newport Center Drive  
Suite 400  
Newport Beach, CA 92660

FOR THE DEFENDANT: MR. CHARLES K. VERHOEVEN  
(Google) MR. DAVID A. PERLSON  
MS. AMY H. CANDIDO  
Quinn Emanuel Urquhart & Sullivan  
50 California Street  
22nd Floor  
San Francisco, CA 94111

MS. JENNIFER PARKER AINSWORTH  
Wilson Robertson & Cornelius  
P.O. Box 7339  
Tyler, TX 75711

FOR THE DEFENDANT: MS. JENNIFER HALTOM DOAN  
(Yahoo!) Haltom & Doan  
6500 Summerhill Road  
Suite 100  
Texarkana, TX 75503

APPEARANCES CONTINUED ON NEXT PAGE:

1 APPEARANCES CONTINUED:

2  
3 FOR THE DEFENDANT: MR. WILLIAM ROOKLIDGE  
4 (Yahoo!) Howrey, LLP  
5 4 Park Plaza, Suite 1700  
6 Irvine, CA 92614

7 MR. JASON WHITE  
8 Howrey, LLP  
9 321 North Clark Street  
10 Suite 3400  
11 Chicago, IL 60610

12 \* \* \* \* \*

13 P R O C E E D I N G S

14 (Jury out.)

15 LAW CLERK: All rise.

16 THE COURT: Please be seated.

17 All right. I understand there are a  
18 couple of preliminary matters to take up. What are  
19 they?

20 MR. PERLSON: Your Honor, one is the  
21 Plaintiff intends to call or use the deposition  
22 testimony of Eric Spangenberg. He is one of two  
23 employees of Bright Response.

24 And it -- it doesn't seem like that's  
25 something that they should be able to do by deposition,  
they should be able to have him here. But we asked last  
night why he isn't here, why he's unavailable, and we

1 didn't get any response.

2 THE COURT: Okay. What's the response?

3 MR. PRIDHAM: Good morning, Your Honor.  
4 David Pridham for the Plaintiff.

5 THE COURT: Where does he live?

6 MR. PRIDHAM: He lives in Dallas, Your  
7 Honor. He's traveling this week.

8 THE COURT: Where to?

9 MR. PRIDHAM: He's going to be in Austin,  
10 but I can represent to the Court that to the extent the  
11 Defendants will object to the clips, he can be here  
12 live.

13 THE COURT: Okay. I don't know. You  
14 need to bring him here live. He's not exactly an  
15 unavailable witness.

16 MR. PRIDHAM: We can do that, Your Honor.

17 THE COURT: All right. Okay. Leave is  
18 granted to the extent you need to designate him as a  
19 witness that will testify live, okay? I don't know how  
20 you designated him in the pretrial order.

21 MR. PRIDHAM: Thank you, Your Honor.

22 THE COURT: But that leave is granted. I  
23 don't know what his travel schedule is, but if you need  
24 to call him out of order at a later time, you know, in  
25 the case, that leave is granted as well.

1                   MR. PRIDHAM: I understand he can be here  
2 by Thursday.

3                   THE COURT: Okay.

4                   MR. PRIDHAM: By at least Thursday of  
5 this week.

6                   THE COURT: All right.

7                   MR. PRIDHAM: Thank you, Your Honor.

8                   THE COURT: What's the other issue?  
9 Anything else?

10                  MR. ROOKLIDGE: Your Honor, you had  
11 requested proposals on closing the courtroom, and we had  
12 a number of exchanges last night about the proposal for  
13 that.

14                  Google presented their proposal that in  
15 order to protect their highly sensitive trade secrets,  
16 the courtroom needs to be closed for testimony or  
17 argument disclosing, one, any Google source code; two,  
18 any specific feature templates; or, three, any specific  
19 attribute templates.

20                  And there was some discussion about  
21 deposition designations for today.

22                  Yahoo!'s proposal as to its highly  
23 confidential information was that the courtroom be  
24 closed during testimony or argument disclosing any  
25 Yahoo! source code and the payment amounts, running

1 royalty rates, or business terms of any agreements to  
2 which Yahoo! or Overture were the licensor. In other  
3 words, licensed-out agreements.

4           Of course, we've argued that those  
5 agreements aren't relevant, but the Court has allowed --  
6 has allowed those in.

7           And those were the proposals that we made  
8 last night. We didn't reach agreement on that, but we  
9 did work out a compromise agreement with Plaintiff,  
10 wherein we could get the deposition excerpts that are --  
11 that were slated for this afternoon to come in today.

12           THE COURT: Well, what do I need to rule  
13 on for today's purposes?

14           MR. ROOKLIDGE: For today's purposes, you  
15 don't need to make a ruling. We understand, unless Dr.  
16 Rhyne goes on and starts talking about source code. At  
17 least for the deposition clips, I think we're square.  
18 But I just don't know what we're going to be seeing from  
19 Dr. Rhyne as far as source code and the other technical  
20 items that Google has identified.

21           THE COURT: Okay. What evidence is in  
22 the record that those portions of the source code that  
23 would be discussed or have been discussed in Rhyne's  
24 report?

25           I don't know the magnitude or the extent

1 of that. You requested closure at any time source code  
2 is discussed. And I need you to tell me what evidence  
3 is in the record that any time source code is discussed,  
4 it would result in disclosure of something that would  
5 justify closing the courtroom.

6 MR. PERLSON: Well, this -- for -- I'm  
7 speaking for Google. I think actually looking at  
8 Dr. Rhyne's direct that the only source code that's  
9 mentioned in here relates to Google's attributes and  
10 features of the SmartAd system. These are the  
11 features that -- I mean, this is what Google used  
12 essentially to help it determine which ads are going to  
13 be the most relevant, and it's part of the prediction  
14 model.

15 And if -- people are all the time trying  
16 to figure out what Google is doing to link ads and, you  
17 know, simply, quote/unquote, game the system. And if  
18 this type of information was out, it would, you know --  
19 it would be extremely damaging to Google.

20 Only 1 percent --

21 THE COURT: Well, I've got your  
22 representation of the case. What proof is in the record  
23 about that?

24 MR. PERLSON: Well, Your Honor, I don't  
25 know if Plaintiff took deposition testimony on how --

1 how confidential our source code is. I mean, I made --  
2 we discussed it with Plaintiff, and they've been -- you  
3 know, in particular Mr. Fenster, we've been dealing with  
4 this in the very way. He recognizes the confidentiality  
5 of it.

6 This is essentially, you know, the recipe  
7 for Coke, for Google, and if we want to get a --

8 THE COURT: Well, carbonated water is one  
9 portion of the recipe for Coke, but the disclosure of  
10 that isn't going to cause -- manifest injury to  
11 Coca-Cola Company.

12 I need you to tell me exactly what  
13 portions of the code you want me to seal the courtroom  
14 for, rather than just a blanket request for any time  
15 source code is discussed we need to close the courtroom,  
16 because that's going to result in a very disjointed  
17 presentation, just as it was in the last Google case  
18 that I tried.

19 I'm trying to prevent that, Counsel.

20 (Mr. Fenster and Mr. Perlson's discussion  
21 off the record.)

22 MR. PERLSON: Mr. Fenster is trying to  
23 cooperate, and I appreciate that. Maybe if I could just  
24 give -- we are not -- how the system works, actually, is  
25 not what we're -- I don't actually think there's going



1 to be any source code about that, and he's going to be  
2 able to testify about that.

3           To use the Coke analogy, it is the  
4 formula, not the carbonated water. And this is a very  
5 limited thing. And -- and so, there are -- there's one  
6 portion of it for Dr. Rhyne's testimony. I think he  
7 would only mentioned it briefly.

8           And then in the deposition of Daniel  
9 Wright, he talks about these specific attribute features  
10 that are the triggers, essentially, that Google uses to  
11 determine when an ad is relevant. And that is -- and  
12 those are very specific things.

13           It's actually not how the system works,  
14 but it's the specific data points that are fed into it.  
15 I mean, Mr. Fenster has been cooperative, and I think  
16 that he recognizes that this is very confidential  
17 information. And I think that maybe we would be talking  
18 about once -- maybe only even once for Dr. Rhyne, and  
19 then maybe just Daniel Wright's deposition. I think  
20 that there's about one portion of it -- there's two  
21 portions of it that have it.

22           MR. FENSTER: Your Honor, Marc Fenster.

23           I -- I don't know, but I will  
24 represent -- I will accept and have accepted  
25 Mr. LaBarre's representation. He's a representative of

1 Google. We spoke.

2           This source code was produced. There's  
3 one piece of source code in an attribute file, one  
4 particular file that was produced during the Furrow  
5 deposition, F-U-R-R-O-W. And I will agree that that is  
6 confidential, and the sealing of the courtroom should be  
7 limited to that.

8           Now, there's one other deposition, and  
9 that's Mr. Wright. Mr. Wright testified at length about  
10 the feature attribute templates. He -- his depo is  
11 designated. I don't mind if the courtroom is sealed for  
12 that.

13           Dr. Rhyne goes through only a few  
14 examples that I don't believe should be super-secret.  
15 And so I would object during -- to interrupt Dr. Rhyne's  
16 testimony and seal the courtroom, with the exception of  
17 that one piece of source code, and the depositions,  
18 which will be done later. And we can do them at the end  
19 of the day or something.

20           THE COURT: Okay. Well --

21           MR. PERLSON: That's fine with Google,  
22 Your Honor.

23           THE COURT: All right. That will be the  
24 procedure. It's incumbent upon y'all to ask to approach  
25 the bench, though, before this issue actually comes up.

1 MR. PERLSON: Absolutely, Your Honor.

2 MR. ROOKLIDGE: Correct.

3 And as to Yahoo!, Your Honor, we're  
4 squared away, as I said before, on the deposition clips.  
5 On the testimony, that testimony regarding the  
6 particular problematic area of the traffic protection  
7 wouldn't go on, if at all, until this afternoon.  
8 So Counsel and I have agreed to loop back together and  
9 talk about that and make sure we know exactly what the  
10 problematic areas will be. And we'll be back to the  
11 Court with that.

12 THE COURT: All right. Anything further?

13 MR. PERLSON: We filed -- I believe that  
14 there's an order coming. In Mr. Sheafe's testimony,  
15 there was a motion filed on that last night.

16 THE COURT: I have denied that.

17 MR. PERLSON: Okay. And then we also  
18 filed a request for relief regarding the Angotti and  
19 Rice and other materials that hadn't been produced.

20 THE COURT: You're requesting a jury  
21 instruction relating to discovery misconduct?

22 MR. PERLSON: Correct.

23 THE COURT: That's your request?

24 MR. PERLSON: Right.

25 THE COURT: I will consider that.

1 MR. PERLSON: Okay.

2 THE COURT: It's -- but I mean, I'm  
3 going to -- when I fashion such an instruction, taking  
4 into account, you know, misconduct is bound to have  
5 occurred in other areas of the case, okay?

6 All right. Bring them in.

7 LAW CLERK: All rise.

8 (Jury in.)

9 THE COURT: All right. Please be seated.  
10 Good morning, Ladies and Gentlemen.  
11 Thank you for being here timely.

12 Mr. Fenster.

13 MR. FENSTER: Good morning, Your Honor.

14 THE COURT: Bring Ms. Rice back around.

15 MR. FENSTER: Yes. Ms. Rice, if you will  
16 take the stand, please.

17 Good morning, Your Honor.

18 Good morning, Ladies and Gentlemen.

19 AMY RICE, PLAINTIFF'S WITNESS, PREVIOUSLY SWORN

20 DIRECT EXAMINATION (CONTINUED)

21 BY MR. FENSTER:

22 Q. Good morning, Ms. Rice.

23 A. Good morning.

24 Q. So I think we've got you set up with a new  
25 microphone today so, hopefully, we'll have a little -- a

1 little more volume today.

2           So yesterday, we -- we were going through the  
3 testing phase, and you had taken us through the  
4 development of EZ Reader at Chase Manhattan Bank. You  
5 told us that it was deployed in a testing environment.  
6 We had gone up through the critical date, and you had  
7 told us that it was still in the testing environment at  
8 that time; is that right?

9           A.     That's correct.

10          Q.     All right. Now, some of the documents,  
11 Ms. Rice, talk about EZ Reader being deployed.

12                 So what does deployment mean?

13          A.     Deployment means that the knowledge-based  
14 application would have been hooked up to all of the  
15 other components that were needed to communicate with  
16 the outside world, to Chase's customers and back into  
17 Chase for additional human activity, if needed.

18          Q.     And yesterday, Ms. Rice, we looked at that  
19 March 29, 1996 e-mail that said it was approved for  
20 production, and you said that there was a technical  
21 interface that had to be built to interface with the  
22 Chase e-mail system?

23          A.     Yes.

24          Q.     So tell us about what that interface was and  
25 whether that was required for deployment.

1           A.     In the application that we were developing,  
2 that interface was very important, because that was the  
3 mechanism to talk from their -- their data message --  
4 messages coming in and also the EZ Reader application.  
5 So it was -- sat in between EZ Reader and the outside  
6 world.

7 Q. And as of April 3, 1996, had that technical  
8 interface to Chase's e-mail system been developed?

9 | A. No.

10 Q. Now, when was EZ Reader actually deployed with  
11 the Chase actual e-mail system?

12 A. I'm not aware that it was deployed at all.

13 Q. Is there any chance that it was deployed by  
14 April 3, 1996?

15	A.	No.
----	----	-----

16 Q. And how do you know that?

17           A.     I was the project manager on the project. I  
18 was in charge of the technical group, and we knew the  
19 database was still in testing, because we still had to  
20 achieve the accuracy requirements of Chase. And we also  
21 had to meet goals for quickness and ability to answer  
22 the customers quickly.

23 Q. Now, Ms. Rice, can I ask you to take a look in  
24 your binder, if you have that, to Exhibit 1078.

25 MR. FENSTER: Your Honor, this is one of

1 the exhibits that we spoke about yesterday.

2 Q. (By Mr. Fenster) Do you recognize this  
3 document?

4 A. Yes, I do. These are notes in my own  
5 handwriting.

6 Q. Okay. And there are two -- two pages. One --

7 MR. PERLSON: Objection, Your Honor.

8 THE COURT: Is there an objection?

9 MR. PERLSON: There's an objection, Your  
10 Honor.

11 THE COURT: Overruled.

12 Q. (By Mr. Fenster) One is Wright 1793, and the  
13 next is Bates-labeled Wright 1794; is that right?

14 A. Yes, I see that.

15 Q. I'm going to --

16 MR. FENSTER: May I, Your Honor, put up  
17 1794, or should I authenticate it first?

18 THE COURT: Well, it hasn't been offered  
19 yet.

20 MR. FENSTER: Yes. Thank you.

21 Q. (By Mr. Fenster) So, Ms. Rice, turning to  
22 1794, can you tell me what that page is?

23 A. These are the meeting notes from a meeting  
24 that Brightware and my project team had with Chase  
25 Manhattan Bank, trying to figure out some problems that

1 we were having.

2 Q. And whose handwriting is this?

3 A. This is my handwriting.

4 Q. And are these notes dated?

5 A. Yes, there's a date.

6 Q. And what is that date?

7 A. It's in the upper right-hand corner. It's  
8 April 2nd, 1996.

9 Q. And is that the date on which you wrote these  
10 notes?

11 A. Yes.

12 Q. And did you take these notes contemporaneously  
13 with a meeting on April 2nd, 1996?

14 A. I did.

15 MR. FENSTER: Your Honor, what I propose  
16 is to offer only the second page that's actually dated  
17 as Exhibit 1078.

18 THE COURT: Okay. Objection?

19 MR. VERHOEVEN: Objection, Your Honor.

20 THE COURT: Okay. Overruled.

21 1078 is admitted.

22 MR. FENSTER: Thank you.

23 Can you pull up 1078, second page,  
24 please?

25 Q. (By Mr. Fenster) So, Ms. Rice, again, these



1 are your handwritten notes, and in the top right-hand  
2 corner, that was the date, April 2nd, 1996?

3 A. That's right.

4 Q. Okay. Now, what -- what -- what do these  
5 notes tell you about whether EZ Reader was actually  
6 deployed as of April 2nd, 1996?

7 A. That it was not deployed to the outside world.

8 Q. And where do you see that? What tells you  
9 that?

10 A. I see notes here about the Chemical Bank  
11 restrictions on putting EZ Reader in and some of the  
12 technical problems that we were having.

13 Q. Okay. And down here, it says: Rochester  
14 receives everything routed to Chemical, quote,  
15 webmaster, end quote, direct receipts not through EZ  
16 Reader, webmaster at chase.com.

17 Do you see that?

18 A. Yes.

19 Q. What does that mean?

20 A. That means that we were under the impression  
21 that we were going to be able to route the e-mails in  
22 one -- through one server, but Chemical Bank had told us  
23 that we needed to change all the technical environment  
24 to route through their servers.

25 Q. So you were up until this time you had been

1 working to develop EZ Reader to work with the old e-mail  
2 system; is that right?

3 A. Yes; that's correct. They wanted to us use  
4 the existing Lotus Notes application, but then Chemical  
5 Bank said stop everything, we want to migrate to a new  
6 environment.

7 Q. So -- and what did they tell you in terms of  
8 continuing with your development and deployment with  
9 respect to the old system?

10 A. From what I heard from Anthony, he had said  
11 that we were to stop deployment of any applications,  
12 that -- that all of Chase was being stopped from  
13 deploying any applications, because Chemical Bank said  
14 they wanted to change the corporate e-mail system to the  
15 new Lotus Notes 4.0 before anything else could be  
16 implemented.

17 MR. VERHOEVEN: Sorry, Your Honor.

18 Objection to that answer as hearsay and  
19 move to strike.

20 THE COURT: Overruled.

21 Q. (By Mr. Fenster) Now, Ms. Rice, did -- once  
22 Chem Bank told you that you needed to start development  
23 on the interface for the new system, what did that --  
24 what did that require you to do?

25 A. Well, that required us to start all over. The

1 new system apparently had different technical ways of  
2 talking to other applications, so we had to use the new  
3 way of doing things.

4 Q. And did you start work on developing the  
5 interface for Lotus Notes 4.0?

6 A. As the project manager at that time, I decided  
7 that we needed to reschedule that application  
8 development project phase.

9 Q. And if I can ask you to turn in your notebook  
10 to Exhibit -- Plaintiff's Exhibit 1085.

11 MR. FENSTER: And I believe this is  
12 already in evidence, Your Honor.

13 1085, Joseph, please.

14 Q. (By Mr. Fenster) Do you recognize this  
15 document, Ms. Rice?

16 A. Yes, I do.

17 Q. And what is this?

18 A. This is the plan that I developed for our  
19 project, showing the new schedule for Lotus Notes 4.0  
20 interface.

21 Q. And what date is this -- was this document  
22 created?

23 A. This was created, according to this page, on  
24 September 25th, 1996.

25 Q. And is that the date -- it's kind of hard to

1 read -- that's in the lower left corner of the document?

2 A. That's in the lower left corner, yes.

3 Q. And did -- was this your project plan for EZ  
4 Reader as of September 1996?

5 A. Yes. This was the project plan.

6 Q. Now, is there an entry on this project plan  
7 that relates to the interfaces for the API for the new  
8 Lotus Notes 4.0 e-mail system?

9 A. Yes. It's -- if you look on the left-hand  
10 corner -- or left-hand side, there's rows -- row  
11 numbers.

12 Q. Yes.

13 A. And No. 32 is the beginning of the -- the  
14 Lotus Notes Response Link Plan.

15 MR. FENSTER: Shouldn't have touched it,  
16 Your Honor. I apologize.

17 Ms. Lockhart, can you help me get it  
18 back?

19 MR. VERHOEVEN: It's over here.

20 MR. FENSTER: Go back to the first page  
21 of 105, please.

22 Okay. Now I won't touch anything, I  
23 promise.

24 Q. (By Mr. Fenster) So this is -- on the  
25 left-hand list, you were pointing to No. 32, and it says

1 Lotus Notes Response Link?

2 A. Yes. That's the line.

3 Q. Okay. And what is that?

4 A. That's a heading for the project part that we  
5 were going to develop the Lotus Notes 4.0 interface.

6 Q. And to the right of that, there are two  
7 columns. One is duration, and what is duration?

8 A. Duration is the amount of work time --  
9 actually, that was the elapsed time that we needed to  
10 complete the Lotus Notes link.

11 Q. And there's a next column that says start --

12 A. Right.

13 Q. -- at the top. At the top of this column, it  
14 says start.

15 A. Uh-huh.

16 Q. And what does that mean?

17 A. Start means the date that we had planned to  
18 start working on that application interface.

19 Q. And what date did you plan to start -- as of  
20 September 1996, what date did you plan to start working  
21 on that interface?

22 A. We scheduled that to start on December 17th,  
23 1996.

24 Q. Now, that's significantly delayed from early  
25 1996 when EZ Reader was originally scheduled for

1 deployment.

2           What happened?

3           A.   Well, we originally thought that we were going  
4 to be developing for the 3.3 environment, but when  
5 Chemical Bank came in and said to stop everything, we  
6 had -- we didn't know whether we should go ahead and,  
7 you know, do all that work for 3.3, or to hold off and  
8 make sure the plans were going to be more solid.

9           Chemical Bank then said, no, you have to  
10 develop it for 4.4 (sic), so we scheduled that  
11 development project.

12          Q.   Now, do you recall at some point the Chase --  
13 that the ChaseDirect development website was going to go  
14 live?

15          A.   The ChaseDirect development website was going  
16 to go live? Yes.

17          Q.   And what does it mean -- and did the Chase  
18 website actually go live?

19          A.   Their Chase home page went live, yes.

20          Q.   What do you mean that their home page went  
21 live?

22          A.   Well, the first step in putting a company into  
23 the internet is to develop what's called a home page.  
24 And the home page is the first page you see when you  
25 navigate to that website.

1           So for Chase, it would be just like a page  
2 with Chase -- you've reached the Chase Manhattan Bank  
3 website.

4           Q.     And, Ms. Rice, when did the ChaseDirect  
5 website go live?

6                     MR. VERHOEVEN:  Objection, foundation.

7           Q.     (By Mr. Fenster) Ms. Rice, do you know?

8                     THE COURT:  Rephrase your question.

9           Q.     (By Mr. Fenster) Ms. Rice, do you know  
10 approximately when the ChaseDirect website went live?

11          A.     Yes.  It went live in late March 1996.

12          Q.     So referring to this timeline, we looked at  
13 Exhibit 1078.  These were your notes on April 2nd, and  
14 it was still in the experimental environment at that  
15 time?

16                    THE COURT:  Just a second, Mr. Fenster.  
17 Counsel needs you to move over where they can see the  
18 diagram during the questioning of your witness.  Go  
19 ahead and do so.

20                    MR. FENSTER:  Okay.

21                    THE COURT:  Proceed.

22          Q.     (By Mr. Fenster) And the ChaseDirect website  
23 went live sometime right at the end of March 1996?

24          A.     Yes, it did.

25          Q.     Okay.  Now, when the ChaseDirect website, the

1 home page went live, was EZ Reader part of that  
2 homesite?

3 A. It was not.

4 Q. And how do you know that?

5 A. I know that because we were still in the  
6 testing phase of the application and that the API had  
7 not been developed to -- in order to hook it up.

8 Q. Now, Ms. Rice, I'd like to ask you to take a  
9 look at Exhibit 855.

10 MR. FENSTER: Your Honor, this is in  
11 evidence.

12 Can you display 855 for the jury, please?

13 Q. (By Mr. Fenster) Now, Ms. Rice, do you  
14 recognize Exhibit 855?

15 A. Yes, I do.

16 Q. And what is Exhibit 855?

17 A. It was a list that was provided by me to Chase  
18 to explain how they could further extend EZ Reader  
19 throughout the Chase organization, once it was in  
20 operation.

21 Q. Okay. Now, does this -- and this is an e-mail  
22 that you sent on March -- on May 13, 1996?

23 A. It is.

24 Q. Okay. And what does this e-mail indicate  
25 about whether EZ Reader had been deployed as of May 13,



1 1996, after the critical date?

2 A. It doesn't indicate anything, because we were  
3 talking about the testing results that we got from the  
4 early EZ Reader for ChaseDirect.

5 It indicates that -- it's only telling the  
6 Chase people what they had to do to get other areas of  
7 Chase ready for the implementation of the EZ Reader,  
8 because for each different implementation, it had to be  
9 managed through different management.

10 Q. Okay. So as of May 13, 1996 -- this is  
11 Exhibit 855 -- as of May 13, 1996, had EZ Reader been  
12 deployed at that point at Chase Bank?

13 A. No, it didn't.

14 Q. Now, I'd like to ask you about Exhibit 586.

15 MR. FENSTER: Would you put 586, please?  
16 This is in evidence.

17 Q. (By Mr. Fenster) Do you recognize Exhibit 586?

18 A. Yes, I do.

19 Q. And what is this document?

20 A. This is a document draft that we were asked to  
21 provide to Chase so that they could train and help the  
22 users of EZ Reader, the e-mail people, use EZ Reader.

23 Q. And if you turn to the second page of Exhibit  
24 586, what date is shown on that page?

25 A. That was 5th of February, 1996.

1           Q.    Now, let's look at Page 6 of Page (sic) 586 in  
2 the very first paragraph.

3           A.    Yes.

4           Q.    And it says: This document describes EZ  
5 Reader currently in use by ChaseDirect Unit, Chase  
6 Manhattan Bank.

7                   Do you see that?

8           A.    Yes, I do.

9           Q.    Now, as of February 6th, 1996, was EZ Reader  
10 in use by ChaseDirect -- by ChaseDirect Unit?

11          A.    No, it was not.

12          Q.    And why does it say that?

13          A.    It says that because we are asked very early  
14 on to prepare a documentation for management review to  
15 look at, so that they could look at it and approve it  
16 for -- for just distribution to their -- to their e-mail  
17 people.

18          Q.    Now, if you could turn to -- it's actually  
19 Exhibit 585, which is the continuation of the same  
20 document, Page 56, please.

21                   So this is the appendix in the same EZ Reader  
22 Guide?

23          A.    Yes.

24          Q.    Okay. Now, in the middle, it says --

25                   MR. FENSTER: Page 56.

1           A.     Okay.

2           Q.     (By Mr. Fenster) Under the bullet point, can  
3 you read the first two lines into the -- for the jury,  
4 after quality?

5           A.     After quality: As initially verified, we  
6 envision sending automatic responses directly to  
7 customers without human intervention.

8           Q.     So as of April 3, 1996, or the date that this  
9 was written in February of 1996, would the software  
10 application as described there be able to send responses  
11 directly to customers?

12          A.     No.

13          Q.     Now, let's go to the article that you did for  
14 the AAAI, which is Exhibit 56.

15                 Now, this is the article that you wrote for  
16 the AAAI?

17          A.     Yes, it is.

18          Q.     Now, are there any portions of this article  
19 that aren't accurate?

20          A.     Yes, there are.

21          Q.     Can you describe them?

22          A.     They're sprinkled here and there through the  
23 document. They refer to deployment of the EZ Reader  
24 application, and they refer to how the API works.

25          Q.     Now, when was this article written?

1           A.     This article was written in December of 1995.

2           Q.     And when was the conference for which this  
3 article was written?

4           A.     The conference was scheduled to be August  
5 1996.

6           Q.     So this paper wasn't going to be published  
7 until later?

8           A.     Until August.

9           Q.     Now, at the time that you wrote this article  
10 in late '95/early '96, did you expect that EZ Reader  
11 would be deployed?

12          A.     Yes, we did expect it would be deployed.

13          Q.     And did you expect that this article would be  
14 truthful by the time it was presented in August 1996?

15          A.     Yes, fully.

16          Q.     And then -- but as it turned out, other things  
17 intervened, and was it actually deployed by August 1996?

18          A.     It was not. And, you know, part of the reason  
19 that we were doing the user guide and stuff like that  
20 was because we were sitting around waiting for the  
21 interface specification to come to us.

22          Q.     Now, at the time that you submitted the  
23 article, was the AAAI aware that EZ Reader had not yet  
24 been deployed?

25                   MR. VERHOEVEN:  Objection, foundation.

1 THE COURT: Sustained.

2 Q. (By Mr. Fenster) Let me ask you to take a look  
3 at Exhibit 1026.

4 A. I have 1025 here, but I don't have 1026.

5 MR. FENSTER: I believe 1026 is in  
6 evidence.

7 Q. (By Mr. Fenster) So, Ms. Rice, do you  
8 recognize Exhibit 1026?

9 A. Yes, I do.

10 Q. And what is this -- what is Exhibit 1026?

11 A. Exhibit 1026 is an e-mail thread, which is a  
12 series of e-mails, written between Brightware and AAAI.

13 Q. So this goes in reverse chronological order;  
14 is that right?

15 A. Yes, it does. So the way this one was -- at  
16 the top.

17 Q. Now -- and this e-mail thread you received?

18 A. Yes.

19 Q. Now, we're going to go to the third page of  
20 this exhibit. This is the second page, and we'll go to  
21 the first e-mail in the string.

22 So this says it was from John Knightly at the  
23 bottom to Phil Klahr, and the subject is IAAI, and then  
24 the text of the e-mail is actually on the next page.  
25 The text of the e-mail is dated December 1995.

1           Now, this is from John Knightly to Phil Klahr.  
2   Who's John Knightly?

3           A.    John Knightly was our product -- I'm sorry --  
4   Marketing Director at Brightware.

5           Q.    Okay.  He was at Brightware.

6                   And who was Phil Klahr?

7           A.    Phil Klahr was a high-level executive at  
8   Brightware at the time.

9           Q.    Okay.  And this says in the second line:  One  
10   of our candidates is an application that is not yet  
11   deployed.  It is scheduled to be deployed in the  
12   January/February timeframe.  The knowledge base has  
13   already been built and the app has been run with  
14   successful results on test data, but it's still awaiting  
15   completion of the integration with the customer's  
16   network.

17                   In your experience, how stringently does the  
18   panel enforce the criterion of deployment?

19                   Now -- then the next e-mail was forwarded from  
20   Phil Klahr, and then it goes up -- there's an e-mail  
21   from Howard Shrobe to Klahr and someone named Senator in  
22   December of 1995?

23           A.    Yes.

24           Q.    So who is Mr. Shrobe?

25           A.    Mr. Shrobe was the person at IAAI that -- I'm

1 sorry -- at AAAI who looked at all of the papers coming  
2 in and decided which ones would get awards.

3 Q. So he was sent an e-mail that has this whole  
4 string that says: Given the recent discussions on  
5 broadening the scope of IAAI papers, yet having the  
6 current call out requiring deployment, at least to a  
7 stage where benefits have been achieved and can be  
8 discussed, how would you like me to respond?

9 So what did you understand this to be?

10 A. I understood that to mean they were -- that  
11 they were questioning their rule of having applications  
12 to be deployed for six months before they could be  
13 presented.

14 MR. VERHOEVEN: Objection, Your Honor,  
15 speculation. The witness is not listed on this e-mail.  
16 There's no foundation.

17 THE COURT: I'll sustain the objection.

18 MR. FENSTER: Okay.

19 Q. (By Mr. Fenster) Is it -- does this document  
20 indicate to you that the IAAI was told that at the time  
21 the article was submitted, EZ Reader was not deployed?

22 MR. VERHOEVEN: Same objection and  
23 leading.

24 THE COURT: I'll sustain the leading  
25 objection.

1           Q.     (By Mr. Fenster) Ms. Rice, what was your  
2 understanding, based on this e-mail, as to whether or  
3 not the IAAI was informed -- or what were they informed  
4 about regarding the deployment of the EZ Reader  
5 application at the time the article was submitted?

6           A.     They were informed that the application had  
7 not been deployed but that we were asking for a waiver  
8 or an exception for handing in this paper.

9           Q.     Now, Ms. Rice, the Defendants are contending  
10 that this application was actually deployed in late  
11 March 1996.

12                     If that had happened, what documentation would  
13 you expect there to be, based on your experience on --  
14 with the documentation of both Chase and Brightware?

15           A.     If it were deployed, I would expect we would  
16 have had a big party, and it would have been in the  
17 corporate newspaper. And, you know, I know that Chase  
18 was very happy about the application of what it might be  
19 able to do for them.

20                     So I would also expect some kind of  
21 recognition from my immediate managers, if not higher  
22 up-level people at my company telling me  
23 congratulations, you did it.

24           Q.     Would there have been any reports evaluating  
25 the performance once it went live?



1           A.     Yes.  There would have also --

2                   MR. VERHOEVEN:  Objection.  Calls for  
3 speculation, Your Honor.

4                   THE COURT:  Overruled.

5                   You can answer the question.

6           A.     There would have been reports, because they --  
7 every day, they collected statistics about how many  
8 calls they got in and how much work they had to do to  
9 answer customer service, because they were very  
10 concerned about their staffing and how it -- if they  
11 were increasing numbers of those, they would have to put  
12 more staff on.

13           Q.     (By Mr. Fenster) And, Ms. Rice, have you ever  
14 seen any documents evaluating any performance of the EZ  
15 Reader system deployed live, responding to live e-mails  
16 at Chase Bank?

17           A.     Never.  All the statistics refer to tests,  
18 standalone testing.

19                   MR. FENSTER:  Thank you, Your Honor.  No  
20 further questions at this time.

21                   THE COURT:  Cross-examination?

22                   MR. VERHOEVEN:  Yes, Your Honor.

23                   I have a couple of brief items I'd like  
24 to approach the bench, so there's no interruptions.

25                   THE COURT:  Okay.

1 MR. VERHOEVEN: May we do that?

2 THE COURT: Certainly. Counsel.

3 (Bench conference.)

4 MR. VERHOEVEN: Thank you, Your Honor.

5 One of the questions that I would like to ask the  
6 witness -- but I want to make sure that it's okay -- is  
7 that she testified at deposition that in her opinion  
8 with respect to the EZ Reader -- well, her understanding  
9 of case-based reasoning, if you type in a keyword that  
10 searches a database looking for documents that contain  
11 that keyword, that that is not case-based reasoning.  
12 The reason I'm asking is because I don't -- I want to be  
13 mindful of Your Honor's instruction. We're not supposed  
14 to try to interpret the claims, but I think that's fair  
15 game, because the claim construction is just as exemplar  
16 cases. And I'd like to ask her that.

17 THE COURT: I appreciate you asking, but  
18 I'm going to let you ask that question. But you need to  
19 ask it not in the context of the way she said it in the  
20 deposition. You need to just ask it.

21 MR. VERHOEVEN: Of course. Of course.

22 THE COURT: Unless you get an answer  
23 that's different from what she said in the deposition.  
24 You can impeach her with a deposition. I just don't  
25 want you to start playing clips of depositions --

1 MR. VERHOEVEN: Of course.

2 THE COURT: -- up there if there's no  
3 real inconsistency. But that's -- I'm going to allow to  
4 you answer that -- or ask that question. I think  
5 it's -- it's fairly within the scope of what's in  
6 dispute. It doesn't tread on the admonishment that I  
7 gave you yesterday.

8 MR. VERHOEVEN: Thank you, Your Honor.

9 And then the other one is, the witness  
10 had a consulting agreement with the predecessor company,  
11 and the signatory to that agreement is Mr. David  
12 Pridham. And there was an MIL that Your Honor granted  
13 generally about e-mails and referring to counsel.  
14 And I just want to make sure that if I ask who he was,  
15 that's okay.

16 THE COURT: That's -- that's -- that's  
17 fair game for cross-examination, okay?

18 Is everybody clear, though, as far as  
19 timing goes? I'm keeping track of time up here. I'm  
20 charging bench conferences against the party that  
21 requests them.

22 MR. VERHOEVEN: Yes, Your Honor.

23 THE COURT: There's nothing improper  
24 about this one. Just so I had you up here, I just  
25 wanted to let you know.

1 MR. VERHOEVEN: Thank you, Your Honor.

2 (Bench conference concluded.)

3 MR. VERHOEVEN: Are we set? Okay.

4 CROSS-EXAMINATION

5 BY MR. VERHOEVEN:

6 Q. Good morning, Ms. Rice.

7 A. Good morning.

8 Q. I'd like to start by putting up DX260, please.

9 This is a picture of the '947 patent, right?

10 A. Yes.

11 Q. Is it up on your screen there, too, right in  
12 front of you?

13 A. Yes, it is. It's really small.

14 Q. Okay. But you recognize that as the patent  
15 you're listed as the inventor on, correct?

16 A. Yes. At Line 75, it says inventors, Amy Rice  
17 and Julie Hsu.

18 Q. All right. Now, Ms. Rice, you've never  
19 actually read the whole patent, have you?

20 A. I've read most of it.

21 Q. Well, you had your deposition taken just March  
22 19th of this year; is that right?

23 A. (Nods head.)

24 Q. You have to answer out. If you would answer  
25 out, we would appreciate it.

1           A.    Yes, I did.

2           Q.    Okay.

3           A.    I believe it is the 19th.  I don't have it  
4 right in front of me.

5           Q.    And you understood that that was a proceeding  
6 where you were giving testimony under oath?

7           A.    Yes.

8           Q.    Similar to your testimony today?

9           A.    Yes.

10          Q.    Okay.  Now, as of March 19th, 2010 when your  
11 deposition was taken, a little over two months ago, at  
12 that point in time, you had never read the whole patent  
13 at that point, had you?

14          A.    I don't remember what I testified.

15          Q.    Do you remember whether you had read it or  
16 not, prior to March of 2010?

17          A.    I don't think I read all of it.  I don't  
18 believe I did.

19                   MR. VERHOEVEN:  Your Honor, I would ask  
20 to play -- to refresh the witness' recollection, Page  
21 25, Lines 6 through 16 of her deposition.

22                   THE COURT:  Okay.

23                   MR. FENSTER:  No objection.

24                   THE COURT:  Okay.

25                   (Video clip playing.)

1                   QUESTION: Can you describe for me  
2 generally what you understand to be the invention of the  
3 '947 patent?

4                   ANSWER: That's -- that's a long  
5 document. I have not read the whole thing.

6                   QUESTION: You've never read the whole  
7 thing?

8                   ANSWER: No.

9                   QUESTION: Were you asked to read the  
10 whole thing in connection with obtaining the patent?

11                  ANSWER: No.

12                  (End of video clip.)

13           Q.     (By Mr. Verhoeven) Ms. Rice, at the time of  
14 that deposition, a little over two months ago, you had  
15 never even seen the final issued patent; is that right?

16           A.     Can you explain by what you mean the final  
17 issued patent?

18           Q.     Yes. This patent we're looking at on the  
19 screen here.

20           A.     I had seen the first pages.

21                         MR. VERHOEVEN: Your Honor, I would like  
22 to play Page 63, Lines 1 through 6 of the witness'  
23 testimony in March.

24                         THE COURT: Okay.

25                         (Video clip playing.)

1                   QUESTION: Let me give you for reference  
2 another exhibit. I have handed you what has previously  
3 been marked as Cohen Exhibit 3.

4                   Do you recognize this document?

5                   ANSWER: I haven't seen this document, if  
6 this is what I think it is, in this form before, no.

7                   (End of video clip.)

8           Q.     (By Mr. Verhoeven) Now, Ms. Rice, is it  
9 correct that you don't know what the invention that's  
10 listed in the '947 patent is?

11          A.     No, it's not correct.

12                  MR. VERHOEVEN: Your Honor, I would like  
13 to play another excerpt from the deposition, Page 25,  
14 Lines 24 through Page 26, Line 5.

15                  THE COURT: Counsel, approach.

16                  (Bench conference.)

17                  THE COURT: I'm not sure what she's going  
18 to say in response to this question, but if it is what I  
19 think it is, it's probably going to prompt an  
20 instructions from me that the claims define the scope of  
21 the invention on the issued patent as construed by the  
22 Court.

23                  So I'm just -- these types of questions  
24 are frequently asked at depositions that occurred well  
25 before the claim construction order issues. So -- I

1 mean, you can proceed on this line, if you want, but  
2 that's where you're headed, okay?

3 MR. VERHOEVEN: Yes, Your Honor.

4 (End of bench conference.)

5 Q. (By Mr. Verhoeven) Ms. Rice, you've offered  
6 testimony on direct examination about the EZ Reader,  
7 correct?

8 A. About the EZ Reader, yes.

9 Q. Yes. That's the system that you worked on,  
10 correct?

11 A. Yes, that's the system I worked on.

12 Q. Is that your -- is it your understanding that  
13 the EZ Reader is an example or embodiment of the '947  
14 patent?

15 A. The EZ Reader application was one way of  
16 implementing the ideas and concepts in the '947 patent.

17 Q. And the EZ Reader, understanding it's an  
18 example -- and the claims define the scope of the  
19 patent.

20 And with that understanding, though, the EZ  
21 Reader that you developed in the real world, that  
22 compared e-mail examples to a database of the actual  
23 e-mails, correct?

24 A. It did so. It also used a rule-based engine  
25 as well.



1           Q.    And the comparing of e-mail examples to actual  
2 e-mails was the case-based reasoning functionality of  
3 the EZ Reader?

4           A.    When you say actual e-mails, in the sense that  
5 they were testing e-mails, yes.

6           Q.    So that was the case-based functionality of  
7 the EZ Reader?

8           A.    It was.

9           Q.    Okay.  Now, as you understand case-based  
10 reasoning, if you had a program that allowed you to type  
11 in a keyword and then search the database looking for  
12 documents that contain that keyword, that would not be a  
13 case-based reasoning, would it?

14          A.    A keyword search can be a part of a case-based  
15 reasoning engine.

16                   MR. VERHOEVEN:  Your Honor, I would like  
17 to play from Page 40 of Ms. Rice's deposition, Lines 15  
18 through 241, Line 2.

19                   (Video clip playing.)

20                   QUESTION:  Well, let's just say that  
21 if -- if -- if there's a program that -- you know, if  
22 you typed in a keyword and then it just searched a  
23 document database looking for documents that contain  
24 that keyword, is that case-based reasoning?

25                   ANSWER:  No.

1 (End of video clip.)

2 A. Right. It's not the entire embodiment of  
3 case-based reasoning.

4 Q. (By Mr. Verhoeven) You would agree that  
5 case-based reasoning is different from keyword matching,  
6 wouldn't you, Ms. Rice?

7 A. If you take key-based -- key-based search  
8 alone, it's different. But it's embodied within the  
9 case-based reasoning technology.

10 MR. VERHOEVEN: Let's display what you  
11 said at Page 24, Lines 6 through 9 of your deposition.  
12 Page 41, Lines 6 through 9, please.

13 MR. FENSTER: Your Honor, objection.

14 THE COURT: Let's --

15 MR. FENSTER: Beyond the scope.

16 THE COURT: Overruled.

17 Q. (By Mr. Verhoeven) Before we play this --

18 MR. VERHOEVEN: Excuse me. I'm sorry.  
19 If Your Honor doesn't mind, I'd like to reask the  
20 question. Is that okay?

21 THE COURT: I don't mind.

22 Q. (By Mr. Verhoeven) Isn't it true, Ms. Rice,  
23 that you would agree that case-based reasoning is  
24 different from keyword matching; isn't that right?

25 A. As a whole, it is.

1 Q. Okay. So case-based reasoning, in your view,  
2 is not keyword matching as a whole, right?

3 A. I think you're combining the two concepts  
4 there when you say keyword search and case-based  
5 reasoning.

6 Q. I'm -- I'm --

7 A. One of them is inside the other.

8 Q. Go ahead. I'm sorry. One is inside?

9 A. Keyword search works within a case-based  
10 reasoning framework, but case-based reasoning is much  
11 more than just keyword research.

12 Q. Case-based reasoning is different from keyword  
13 matching, isn't it, Ms. Rice?

14 A. Yes, it is.

15 Q. Ms. Rice --

16 MR. VERHOEVEN: Do we have a binder?

17 Q. (By Mr. Verhoeven) I'd like to hand up a  
18 binder for you.

19 MR. VERHOEVEN: Two copies, Your Honor?

20 THE COURT: One's fine. Otherwise, I'll  
21 look like I'm collecting notebooks up here.

22 MR. VERHOEVEN: May I approach your  
23 Honor?

24 THE COURT: Yes.

25 MR. VERHOEVEN: If we could put up DX260

1 again, please, Ryan.

2 Q. (By Mr. Verhoeven) Ms. Rice, if you could look  
3 back to the back of the patent at Claim 26.

4 MR. VERHOEVEN: And, Ryan, maybe we can  
5 put that back up, the back of the patent.

6 A. I'm sorry. Can you tell me what column you're  
7 looking at?

8 Q. (By Mr. Verhoeven) Looks like it's Column 14,  
9 Ms. Rice.

10 A. Thank you. Okay.

11 Q. You see Claim 26 there?

12 A. Yes, I do.

13 Q. And there's a Step A -- well, actually, in the  
14 preamble, it says: A method for automatically  
15 processing a non-interactive electronic message.

16 Do you see that?

17 A. Yes, I do.

18 Q. And then Step A says: Receiving the  
19 electronic message from a source.

20 Do you see that one?

21 A. Yes, I do.

22 Q. Now, before you developed the EZ Reader  
23 program, would you agree with me that there were other  
24 programs that could receive a message from the source?

25 A. When you say other programs, can you define

1 that?

2 Q. Well, would you agree that before the  
3 development of the EZ Reader program -- or the EZ  
4 Reader, that messages were received from a source in  
5 other programs that existed in the art?

6 A. Maybe from other utilities, yes, I can think  
7 of those.

8 Q. So before you developed the EZ Reader, there  
9 were other programs out there where messages were  
10 received from a source, correct?

11 A. Sure. I mean, if you consider a TV broadcast  
12 a message from a source.

13 Q. All kinds of different ways that messages can  
14 be received from sources, right?

15 A. Yes.

16 Q. Computer programs as well, right?

17 A. Yes.

18 Q. Okay. Now, if you look at Step B, it says,  
19 quote: Interpreting the electronic message using a  
20 rule-based and case-based knowledge engine.

21 Do you see that?

22 A. Yes, I do.

23 Q. Now, you would agree that rule-based reasoning  
24 existed before you started work on the EZ Reader,  
25 correct?

1       A.     Some rule-based -- there were different  
2 rule-based systems out there, but they did exist.

3       Q.     So the answer is yes, rule-based reasoning  
4 existed before you started work on the EZ Reader,  
5 correct?

6       A.     Yes, multiple ways.

7       Q.     Okay. And before the EZ Reader, electronic  
8 messages had been interpreted using rule-based knowledge  
9 engines, correct?

10      A.     I'm sorry. Could you repeat?

11      Q.     Yes.

12             Before you developed and worked on the EZ  
13 Reader, there were systems out there in which electronic  
14 messages had been interpreted using rule-based knowledge  
15 engines, right?

16      A.     According to some of the references in the  
17 patent, yes.

18      Q.     So the answer is yes?

19      A.     Yes.

20      Q.     Okay. And you would agree with me, also, Ms.  
21 Rice, that before you started working on the EZ Reader,  
22 that case-based reasoning existed out there in other  
23 programs, right?

24      A.     What do you mean by in other program?

25      Q.     Well, let me rephrase the question.

1 An aspect of the EZ Reader that you developed was  
2 case-based reasoning, correct?

3 A. Yes, it was.

4 Q. And case-based reasoning existed before the  
5 development of the EZ Reader, correct?

6 A. Are you talking about commercial case-based  
7 reasoning?

8 Q. Any kind of case-based reasoning, Ms. Rice.

9 A. Okay. Case-based reasoning was a theory that  
10 was developed in academia and then commercialized in  
11 ART\*Enterprise.

12 Q. So the idea of case-based reasoning was  
13 developed and conceived and published before you began  
14 working on the EZ Reader, correct?

15 A. Yes, that's right.

16 Q. Okay. And there were actual applications out  
17 there using case-based reasoning before you developed  
18 the EZ Reader, right?

19 A. Yes. I wrote some of them.

20 Q. Now, you mentioned that you worked at a  
21 company called Inference?

22 A. Correct.

23 Q. And Inference was the predecessor to -- can  
24 you remind me? Inference was the predecessor to what  
25 company?

1           A.     To Brightware.

2           Q.     To Brightware.

3                   And when you worked at Inference, is it  
4 correct that there were already -- they already had  
5 technology at Inference for both rule-based reasoning  
6 and case-based reasoning?

7           A.     Yes, they had technology.

8           Q.     So that existed before you started work on the  
9 EZ Reader, right?

10          A.     Yes, it did.

11          Q.     Okay. Would you agree with me that as far  
12 back as the 1980s, there were applications that used  
13 both rule-based and case-based knowledge engines?

14          A.     I don't have personal knowledge of that.

15          Q.     Do you have personal knowledge of whether  
16 there were commercial applications out there that used  
17 both rule-based and case-based knowledge engine?

18          A.     I don't have personal knowledge of that  
19 either.

20          Q.     Okay. I'd like to play from your deposition  
21 in March of this year Page 25, Lines 7 through 17.

22                   (Video playing.)

23                   QUESTION: So had knowledge-based systems  
24 been used in the '80s?

25                   ANSWER: Oh, yeah.



1                   QUESTION: And would that be both  
2 rule-based and case-based knowledge engines?

3                   ANSWER: Yes. Are you talking about  
4 commercial -- commercial applications?

5                   QUESTION: Yes.

6                   ANSWER: Yes.

7                   (End of video clip.)

8           Q.     (By Mr. Verhoeven) So does that refresh your  
9 recollection that there were applications -- commercial  
10 applications out there that used both rule-based and  
11 case-based reasoning?

12          A.     Yes. Could I explain?

13          Q.     You could explain on redirect.

14                   THE COURT: Hold on a second. I promise  
15 you, I'm going to let the Plaintiff's lawyers ask you  
16 some additional questions. If you need to explain any  
17 of the answers you give on cross, I'll let you do that,  
18 okay?

19                   THE WITNESS: Yes, sir.

20          Q.     (By Mr. Verhoeven) But in answer to my  
21 question, you would agree with me that there were  
22 commercial applications out there, before you started  
23 working on EZ Reader, that used both case-based and  
24 rule-based knowledge engines?

25          A.     (Nods head.)

1 Q. Yes?

2 A. Yes. Before, yes.

3 Q. That's yes?

4 A. Yes.

5 Q. Okay. Now, Ms. Rice, I'd like to switch  
6 subjects to the development of the EZ Reader.

7 MR. VERHOEVEN: So we can take the --  
8 Ryan, we can take that off the screen, please.

9 Q. (By Mr. Verhoeven) Now, your -- on your direct  
10 testimony, you testified before this jury that the EZ  
11 Reader was never used to respond to e-mails from live  
12 customers.

13 Is that your testimony?

14 A. Absolutely.

15 Q. Okay. But you do admit that the EZ Reader was  
16 tested, correct?

17 A. Yes. We tested it for a very long time.

18 Q. And during what you describe as this testing,  
19 you would take all of the e-mail communications sent to  
20 the ChaseDirect banking website and load those messages,  
21 correct?

22 A. That's not correct.

23 Q. Okay.

24 MR. VERHOEVEN: I'd like to play from  
25 Page 29 of your deposition, Lines 18 through 25.

1                   MR. FENSTER: Your Honor, can I just ask  
2 that -- one second. Just let -- just ask for a quick  
3 pause and let me get there.

4                   THE COURT: Yes.

5                   MR. FENSTER: What's the line number?

6                   MR. VERHOEVEN: 18 through 25.

7                   MR. FENSTER: Okay.

8                   THE COURT: Let's go.

9                   (Video playing.)

10                  QUESTION: And can you describe for me  
11 what -- what the testing involved?

12                  ANSWER: Yes.

13                  QUESTION: Please do so.

14                  ANSWER: Let me get this all -- the  
15 testing involved taking electronic mail communications  
16 sent to Chase, to their direct banking website, and  
17 loading those into a framework that processed them.

18                  (End of video clip.)

19                  Q.     (By Mr. Verhoeven) So at your deposition, you  
20 testified that, quote: The testing involved taking  
21 electronic mail communications sent to -- sent to Chase,  
22 to their direct banking website, and loading those into  
23 a framework that processed them, correct?

24                  A.     (No response.)

25                  Q.     Is that right?

1           A.     Before I testified to this jury yesterday that  
2 I had taken 200 of those actual e-mail messages and  
3 tested them in a test environment.

4           Q.     Ms. Rice, is it true or is it not that the  
5 testing involved taking electronic mail communications  
6 sent to Chase, to the direct banking website, and  
7 loading those into a framework that processed them?

8           A.     That is true, some of them.

9           Q.     Some of it or all of it?

10          A.     No.    Some.   200.

11          Q.     And in this test environment, Ms. Rice, EZ  
12 Reader processed 50 to 80 percent of all incoming  
13 electronic messages, correct?

14          A.     In our test environment, yes.

15          Q.     And you would agree that the EZ Reader  
16 prototype could reply to e-mail messages automatically,  
17 correct?

18          A.     Yes, it could reply --

19          Q.     Okay.

20          A.     -- to us.

21          Q.     Now, Ms. Rice, you gave some testimony about  
22 the timeline and the deployment of the EZ Reader project  
23 on direct examination, but isn't it true that you were  
24 taken off the EZ Reader project before testing was  
25 complete?

1           A.     Testing was an ongoing activity, so yes, I was  
2 taken off before it was complete.

3           Q.     So the answer is yes, you were taken off the  
4 EZ Reader project before testing was complete, correct?

5           A.     That's right.

6           Q.     And you personally were not even involved in  
7 the EZ Reader test, were you?

8           A.     I was involved in the EZ Reader test.

9           Q.     You were not personally involved in the  
10 experiment that was used to test the EZ Reader, were  
11 you?

12          A.     I don't know what you mean by experiment.

13          Q.     Well, let's play your answer to that very  
14 question.

15                   THE COURT:   Page and line.   Page and line  
16 number first.

17                   MR. VERHOEVEN:   Yes, Your Honor.

18                   I'd like to play, Your Honor, from  
19 Page 144, Lines 18 through 21, of Ms. Rice's deposition  
20 on March 2010.

21                   MR. FENSTER:   No objection.

22                   (Video playing.)

23                   QUESTION:   But just to be clear, you were  
24 not personally involved in the experiment?

25                   ANSWER:   That's right.

1 (End of video clip.)

2 Q. (By Mr. Verhoeven) You don't have personal  
3 firsthand knowledge of the experiment that was run in  
4 Rochester, New York, do you?

5 A. I wasn't in Rochester, no.

6 Q. So the answer is, you do not have personal  
7 knowledge about that testing, right?

8 A. With that particular test, yes.

9 Q. Okay. And you don't recall ever getting any  
10 documents about that testing, right?

11 A. On the contrary. I do.

12 MR. VERHOEVEN: I'd like to play, Your  
13 Honor, from Page 150, Lines 10 through 12 of Ms. Rice's  
14 deposition from March of 2010.

15 THE COURT: All right.

16 MR. VERHOEVEN: Thank you.

17 (Video playing.)

18 QUESTION: Going back to your declaration  
19 in Paragraph 11 of Rice Exhibit 4 --

20 ANSWER: Uh-huh.

21 QUESTION: -- do you have any  
22 documentation of the testing that you're referring to in  
23 that paragraph?

24 ANSWER: I can't remember whether or not  
25 I got actual documentation.

1 (End of video clip.)

2 Q. (By Mr. Verhoeven) Now, Ms. Rice, you  
3 testified that the EZ Reader system never went live to  
4 interact with external customers. Is that your -- that  
5 was your testimony on direct, right?

6 A. That's correct.

7 Q. But isn't it true, Ms. Rice, that you didn't  
8 have access to the part of the EZ Reader system that  
9 interacted with external customers through e-mail, did  
10 you?

11 A. No, I didn't, because it wasn't in operation.

12 Q. So you didn't have access to that part of the  
13 system, did you?

14 A. I didn't have personal access, no.

15 Q. And you also weren't involved in developing  
16 the driver interface to Lotus Notes, were you?

17 A. No, I wasn't. I was in more of a managerial  
18 role.

19 Q. So you weren't involved in the -- developing  
20 the driver for Lotus Notes, were you?

21 A. No. I was only there for scheduling and  
22 technology.

23 Q. Isn't it true, Ms. Rice, that you can't even  
24 remember the year when you were taken off the EZ Reader  
25 project, can you?

1           A.     The year?

2           Q.     That's right.

3           A.     1996.

4                   MR. VERHOEVEN:   Your Honor, I'd like to  
5 play from the witness' deposition, Page 32, Lines 1  
6 through 6.

7                   THE COURT:   Okay.

8                   (Video playing.)

9                   QUESTION:   That was going to be when were  
10 you off the project.

11                   ANSWER:   I think it was in my affidavit.  
12 I'm not sure.   It was March or April, maybe May.  
13 March -- I think it was April of -- I guess it would be  
14 '95, '96.   I can't remember what year.

15                   (End of video clip.)

16           Q.     (By Mr. Verhoeven) At your deposition just a  
17 couple of months ago, you couldn't remember what year,  
18 could you?

19           A.     No.   That was the first time I had been  
20 deposed, and actually, I guess I was a little nervous.  
21 No, I couldn't remember what year at the time.

22           Q.     Isn't it true that you can't really tell this  
23 jury for sure whether or not messages generated by EZ  
24 Reader could be sent to customers?   Because you weren't  
25 there; isn't that true, Ms. Rice?



1           A.     No.   I was in the -- I was the project manager  
2 of most of their projects during that whole period.

3                   MR. VERHOEVEN:   Your Honor, I'd like to  
4 play from Page 143, Lines 14 through 23 of Ms. Rice's  
5 deposition from March of 2010.

6                   THE COURT:   All right.

7                   (Video playing.)

8                   QUESTION:   Right.   But when the EZ Reader  
9 was there, they were able to take what was generated by  
10 the EZ Reader and send it to customers.

11                   ANSWER:   I can't say for sure, but, I  
12 mean, I -- I can't say that there wasn't.   I wasn't  
13 there, so...

14                   (End of video clip.)

15           Q.     (By Mr. Verhoeven) You weren't there, were  
16 you?

17           A.     No.   I was there, but I don't remember being  
18 there.

19           Q.     Ms. Rice, isn't it true that you don't know  
20 what Chase Manhattan Bank did with the EZ Reader, do  
21 you?

22           A.     I don't know what Chase Manhattan Bank did  
23 with the EZ Reader after I left the -- that company.

24           Q.     So that's correct?

25           A.     Yes.

1 Q. Okay. And it's possible that the EZ Reader  
2 was deployed by Chase without your knowledge, isn't it?

3 A. We didn't have access to the technical people  
4 who might -- may have taken a copy of that application,  
5 so that's correct.

6 Q. That's correct?

7 A. Yeah.

8 Q. So then you agree that it's possible that  
9 Chase deployed the EZ Reader without your knowledge,  
10 right?

11 A. Only if I wasn't at the application site at  
12 that time.

13 Q. So is that a yes?

14 A. That's a yes, as long as I wasn't there.

15 Q. They could have deployed it, and you wouldn't  
16 have known about it, because you weren't there, right?

17 A. Yeah. That's what I'm trying to get at.

18 Q. Okay.

19 A. I don't see how they could have kept it a  
20 secret.

21 Q. Well, if you don't have access to it and you  
22 weren't there, you think that's keeping it a secret?

23 A. I don't know. It could be.

24 Q. Let's go to -- let's switch subjects again,  
25 Ms. Rice, and go to the AAAI article that's been

1 discussed in this case.

2 MR. VERHOEVEN: This is DX30, please.

3 Q. (By Mr. Verhoeven) and this should be in your  
4 binder as well.

5 A. Yes, sir.

6 MR. VERHOEVEN: Ryan, if you could just  
7 highlight the first two-thirds down at the bottom of the  
8 abstract on the first page, please.

9 No. I'm sorry. The whole document down  
10 about -- just a little bit over -- right there. Thank  
11 you.

12 Q. (By Mr. Verhoeven) Now, what is the AAAI?

13 A. The AAAI was an international organization of  
14 professionals in the field of artificial intelligence.

15 Q. And this is an article that they published?

16 A. They published this article in August 1996.

17 Q. This is an article they published then, right?

18 A. Yes, it is.

19 Q. Okay. And the title says: EZ Reader:  
20 Embedded A -- is that AI?

21 A. Are you talking about the title?

22 Q. Yes, I am.

23 A. Oh, I'm sorry. Embedded AI, yes.

24 Q. EZ Reader: Embedded AI for Automatic  
25 Electronic Mail Interpretation and Routing.

1           Do you see that?

2       A.    Yes, I do.

3       Q.    And this article is a description of the EZ  
4 Reader system that you were working on, right?

5       A.    Yes, that's a description of EZ Reader.

6       Q.    Okay. And that's your name, together with  
7 Julie Hsu at Brightware; is that right?

8       A.    That's correct.

9       Q.    And you two were authors?

10      A.    Yes.

11      Q.    Okay. And then below that is Anthony Angotti  
12 and Rosanna Piccolo.

13           Do you see that?

14      A.    Yes, I do.

15      Q.    And they are also authors?

16      A.    We put their names on the paper as a gesture  
17 of -- like business, you know, friendliness, I guess you  
18 would say. They were our managers for the project,  
19 so...

20      Q.    Well, did -- I think you said yesterday  
21 Mr. Angotti was your hero --

22      A.    Yes.

23      Q.    -- or your champion?

24      A.    Yeah.

25      Q.    Okay.

1           A.     That's a business term for, you know, someone  
2 who advocates your -- bringing you into a company.

3           Q.     Okay.  The AAAI, that's a prestigious  
4 organization, isn't it?

5           A.     Yes.  It's the premiere organization for  
6 people who are working in either research or commerce  
7 with artificial intelligence.

8           Q.     And the article here we're looking at was a  
9 selective article, meaning that it was actually selected  
10 for publication by the AAAI, right?

11          A.     Yes.  They had a -- they had several  
12 submissions that year, and they picked about a third of  
13 them for awarding.

14          Q.     So it was sort of an award to get published by  
15 the AAAI?

16          A.     Yes.

17          Q.     Okay.  And you and Ms. Hsu wrote this article  
18 to tell people in the AI community about what you had  
19 developed, right?

20          A.     Yes, what we had developed in a test  
21 environment.

22          Q.     Now, when you wrote this article, you believed  
23 it was important to be accurate, didn't you?

24          A.     Yes.

25          Q.     Ms. Rice, do you see --

1                   MR. VERHOEVEN: If we could just pull out  
2 the -- Ryan, just -- just -- go back to just the  
3 abstract, like you did initially.

4                   And about two-thirds of the way down,  
5 Ryan, I'll ask you to highlight this, if you could. It  
6 says: Phase 1 of the EZ Reader.

7                   Do you see that sentence? Just bring the  
8 whole thing out, Ryan, please.

9           Q.     (By Mr. Verhoeven) Okay. And do you see that  
10 on the screen, Ms. Rice?

11          A.     Yes, I do.

12          Q.     Okay. Can you read it okay?

13          A.     Yes, I can.

14          Q.     Okay. It says, quote: Phase 1 of EZ Reader  
15 was developed (sic) in the first quarter of 1996 and  
16 handles up to 80 percent of incoming mail automatically,  
17 depending on message content.

18                 Do you see that?

19          A.     Yes, I do.

20          Q.     You know, I was just pointed out that I  
21 misread the quote, so for the record, I'm going to read  
22 it again. I -- so you know what I misstated. I said  
23 developed, and the word is deployed. So let me try it  
24 one more time.

25                 The phrase says -- excuse me -- the words here

1 say, quote: Phase 1 of EZ Reader was deployed in the  
2 first quarter of 1996.

3 Do you see that?

4 A. Yes, I do.

5 Q. And then it goes on and says: And handles up  
6 to 80 percent of incoming mail automatically, depending  
7 on message content.

8 Do you see that?

9 A. Yes, I do.

10 Q. Now, you testified on direct examination that  
11 the EZ Reader was not deployed in the first quarter of  
12 1996, didn't you?

13 A. That's correct.

14 Q. So would you agree with me that this sentence  
15 that you authored in this AAAI article is inconsistent  
16 with the testimony you gave to your jurors -- to the  
17 jury?

18 A. Yes. This was -- what I had written in  
19 December of 1995 is inconsistent.

20 Q. Okay. Is it your testimony today that back in  
21 1996 when you wrote this statement, that you knew it was  
22 false when you drafted it?

23 A. We fully believed that it would be true by the  
24 time the paper was published in August 1996.

25 Q. Did you know that it was false when you

1 drafted it?

2 A. Yes.

3 Q. And you submitted it to the AAAI anyway,  
4 didn't you?

5 A. Yes, we did.

6 Q. Now, when you submitted this article to the  
7 AAAI, you personally, Ms. Rice, didn't inform anyone  
8 that this statement was untrue, did you?

9 A. Well, my management looked at the entire  
10 article. They knew that this wasn't deployed, and so we  
11 were very concerned with AAAI not accepting the paper --

12 MR. VERHOEVEN: Move to strike.

13 A. -- even though it hadn't been deployed.

14 MR. VERHOEVEN: I move to strike as  
15 nonresponsive.

16 THE COURT: I'll sustain the objection.

17 Ma'am, the question was whether you  
18 personally informed anyone that this statement was not  
19 true.

20 A. I personally did not inform anyone.

21 Q. (By Mr. Verhoeven) So you personally -- even  
22 though you knew this was an untrue statement, according  
23 to your testimony, you didn't tell anybody about it  
24 personally, did you?

25 A. I can't be sure if I didn't tell anybody, but



1 I don't believe I did.

2 Q. You didn't have any discussions with your  
3 co-author, Ms. Hsu, about this allegedly inaccurate  
4 statement, did you?

5 A. I may have. I was aware of the -- of the  
6 requirement.

7 Q. Do you remember telling Ms. Hsu that this was  
8 an inaccurate statement?

9 A. I don't remember.

10 Q. And isn't it true that you don't have any  
11 recollections of any discussions with Ms. Hsu to the  
12 effect that this was an inaccurate statement?

13 A. I really can't recall what I was -- what  
14 conversations I may or may not have had in 1995.

15 Q. No one told you to write this sentence in the  
16 article, did they?

17 A. No one told me to write this sentence?

18 Q. That's correct.

19 A. Yes, that's correct.

20 Q. So the answer to the question is yes, no one  
21 told you?

22 A. No one told me to write any of these --

23 Q. Okay.

24 A. -- statements.

25 Q. Now, after you submitted this article to this

1 prestigious organization in 1996 and after it was  
2 selected, you attended a AAAI conference, correct?

3 A. That's right.

4 Q. And that was in August of 1996, right?

5 A. Yes, in Portland, Oregon.

6 Q. And that's a big deal, right?

7 A. It was a very big deal.

8 Q. And you gave a speech about your article at  
9 that conference, didn't you?

10 A. Yes. Julie Hsu and I and Rosanna Piccolo all  
11 spoke at that conference.

12 Q. And there are about, what, 450 people at that  
13 conference? Is that about right?

14 A. The whole conference itself is about 9,000,  
15 and they had a choice of which to attend, and ours was  
16 about 450.

17 Q. Okay. And you stood up there in front of all  
18 those 450 people and you didn't tell any of them that  
19 this statement in your article about EZ Reader's  
20 deployment was incorrect, did you?

21 A. No, I didn't tell any of them, because that  
22 would have been misleading.

23 Q. You didn't tell any of them that it had not --  
24 excuse me.

25 You did not tell any of them that Phase 1 of

1 the EZ Reader, in fact, had not been deployed, did you?

2 A. No, I didn't.

3 Q. Now, you testified on direct that: Oh, well,  
4 when I originally wrote this, we thought it would be  
5 deployed by the time of the conference, right? Remember  
6 that?

7 A. Yes, I do.

8 Q. And it's your testimony that it wasn't  
9 deployed by the time of the conference, right?

10 A. That's correct.

11 Q. That's your testimony on direct, right?

12 A. Uh-huh.

13 Q. But you didn't -- when you attended this  
14 conference and accepted the award, you didn't mention,  
15 Oh, by the way, this hasn't been deployed, did you?

16 A. No, and I was not required to.

17 Q. So you accepted -- it's your testimony, you're  
18 asking the jury to believe that you accepted an award at  
19 a prestigious organization back in 1996 under the  
20 assumption that this entire system had been deployed and  
21 didn't mention that, in fact, it had not been deployed,  
22 right?

23 A. Could you repeat that, please?

24 Q. Yes.

25 You're asking the jury to believe that you

1 remember today that the system wasn't deployed, but you  
2 admit, Ms. Rice, don't you, that you attended this  
3 conference with 450 people going over this paper, which  
4 says it's deployed, and didn't once mention back in 1996  
5 that it wasn't deployed?

6 A. That's correct.

7 Q. Okay. Now, let's look at some other parts of  
8 the article here.

9 MR. VERHOEVEN: Ryan, if we could go back  
10 to the first page again.

11 Q. (By Mr. Verhoeven) Now, if you look down at  
12 the bottom, on the right-hand column, the bottom  
13 paragraph, you see the sentence that says: The  
14 application continually retrieves?

15 A. Yes.

16 MR. VERHOEVEN: Ryan, if you could  
17 highlight that sentence all the way to the end.

18 Q. (By Mr. Verhoeven) And I'll just read it for  
19 the record, Ms. Rice.

20 The application continually receives (sic)  
21 incoming internet e-mail from Chase prospects and  
22 customers through an interface to Lotus Notes and also  
23 acts as a filtering and a routing --

24 MR. VERHOEVEN: Go to the next page.

25 Q. (By Mr. Verhoeven) -- a filtering and routing

1 mechanism either applying to the e-mail automatically or  
2 attaching a suggested response and referring the message  
3 for manual review.

4 MR. VERHOEVEN: Could we put those two  
5 side by side, Ryan, so that we can have the whole  
6 sentence there?

7 Q. (By Mr. Verhoeven) Now, this sentence says --  
8 and this is the article you wrote back in 1996, right?

9 A. 1995, yes.

10 Q. '95, right.

11 And this sentence says in the present tense:  
12 The application continuously receives (sic) incoming  
13 internet e-mail from Chase prospects --

14 THE COURT: Mr. Verhoeven, does it say  
15 receives or retrieves?

16 MR. VERHOEVEN: Oh, I'm sorry, Your  
17 Honor.

18 THE COURT: Okay.

19 MR. VERHOEVEN: I misspoke. I'll try to  
20 be more careful.

21 THE COURT: I just want to make sure the  
22 record's right.

23 MR. VERHOEVEN: Thank you, Your Honor.

24 Q. (By Mr. Verhoeven) It says, quote: The  
25 application continuously retrieves incoming internet

1 e-mail from Chase prospects and customers through the  
2 interface to Lotus Notes and also acts as a filtering  
3 and routing mechanism, either replying to the e-mail  
4 automatically or attaching a suggested response and  
5 referring the message for manual review.

6 Do you see that?

7 A. Yes, I do.

8 Q. And that's in the present tense, right?

9 A. It is.

10 Q. And this is what you wrote way back in 1995,  
11 right?

12 A. Right.

13 Q. Now, according to your direct testimony  
14 today -- is it 15 years later? Is that right?

15 A. About that.

16 Q. Yeah. So according to your recollection  
17 today, 15 years later, on direct examination, you're  
18 asking the jury to believe, in fact, notwithstanding  
19 this sentence that EZ Reader never mailed any automatic  
20 responses back to the senders; is that right?

21 A. That's correct.

22 Q. Okay. And according to your testimony to the  
23 jury on direct, notwithstanding this sentence, at the  
24 time this article was submitted, the Lotus Notes  
25 interface had not even been developed.

1                   Is that what your testimony is?

2           A.     Yes.

3                   MR. VERHOEVEN:   Now, let's go back to  
4 the -- Page 1508.   That's the second page, Ryan, on the  
5 right.

6                   And if we could go down to the -- Ryan,  
7 if we could just pull the first full -- the first  
8 carryover paragraph underneath -- on the left side  
9 underneath the graphic?

10                   Thank you.

11           Q.     (By Mr. Verhoeven) And now, Ms. Rice, do you  
12 see the last sentence in that paragraph?

13                   MR. VERHOEVEN:   And, Ryan, I'd ask you to  
14 highlight that and pull that out, please.

15                   And I'll read it to the record.   I'll try  
16 to do it accurately this time.

17           Q.     (By Mr. Verhoeven) Quote, EZ Reader's  
18 automated reasoning capabilities enabled ChaseDirect to  
19 reach these goals and significantly reduce the manual  
20 effort needed for e-mail processing, close quote.

21                   Do you see that?

22           A.     Yes, I do.

23           Q.     And you wrote that in 1996, right?

24           A.     1995.

25           Q.     1995.   I'm sorry.

1           And this is written in the present tense,  
2 right?

3           A.    Yes, it is.

4           Q.    And this tells all those people reading the  
5 AAA (sic) article that the system you developed, quote,  
6 enabled ChaseDirect to reach these goals and  
7 significantly reduce the manual effort needed for e-mail  
8 processing, correct?

9           A.    Yes. We were very enthusiastic at the time.

10          Q.    Now, according to your testimony today, over  
11 14 years later, on direct examination, it's your  
12 recollection that contrary to this statement, EZ Reader  
13 was never actually used to reduce the manual effort  
14 needed for e-mail processing?

15          A.    Yes.

16          Q.    You would admit that this statement is  
17 inconsistent with your direct testimony.

18          A.    Inconsistent.

19          Q.    You would agree?

20          A.    Maybe I misunderstood you. Could you read it  
21 again?

22          Q.    Would you agree with me that the sentence that  
23 you wrote back in 1996 and submitted to a large  
24 organization is inconsistent with your testimony 14  
25 years later about your recollection?



1           A.    Is the testimony somewhere for me to look at?

2           Q.    I'm talking about the testimony you gave  
3 yesterday and this morning on direct examination.

4                    You don't remember it?

5           A.    Well, I'm not sure what you're referring to.

6           Q.    Ms. Rice, I'm asking you, if this sentence,  
7 which says that the EZ Reader's automated reasoning  
8 enabled ChaseDirect to reach its goals and significantly  
9 reduce the manual effort needed for e-mail processing  
10 that you wrote back in 1996 is inconsistent with your  
11 testimony on direct examination to this jury?

12          A.    I can't answer that.

13          Q.    You can't answer that.

14                   Well, you did testify to the jury on direct  
15 that EZ Reader was never deployed by Chase, right?

16          A.    Oh, okay. Yes. In that sense, yes.

17          Q.    Okay. So it is inconsistent with the  
18 testimony you gave on direct examination, this sentence  
19 here.

20          A.    It was never deployed, yes. So that  
21 sentence is -- whatever.

22          Q.    It's inconsistent with your direct testimony,  
23 correct?

24          A.    It's inconsistent with anything about  
25 deployment.

1                   MR. VERHOEVEN: Let's go to Page 15511  
2 (sic) of the article, please.

3           Q.     (By Mr. Verhoeven) This should be in your  
4 binder, Ms. Rice.

5                   MR. VERHOEVEN: And, Ryan, if we could  
6 pull out the -- after the heading, AI Enables E-mail  
7 Classification, there's a third paragraph down that  
8 says: Automated -- Automatic Response. If you could  
9 pull that paragraph out.

10          Q.     (By Mr. Verhoeven) Ms. Rice, can you take a  
11 second and look at that, please?

12          A.     (Complies.)

13          Q.     And I'll read it for the record.

14                   Quote, Automatic Response. EZ Reader assigns  
15 a category of automatic response to items that can be  
16 associated with a response from the Lotus Notes  
17 repository of standard responses and directly mailed  
18 back to the sender without manual review or revision.

19                   Do you see that?

20          A.     Yes, I do.

21          Q.     So this sentence is describing the automatic  
22 response of the EZ Reader in the present tense, right?

23          A.     Yes. This refers to our test environment.

24          Q.     This doesn't say test environment, does it,  
25 Ms. Rice?

1           A.    No, it doesn't.

2           Q.    Okay.  So when you wrote this back in 1996,  
3 you didn't think to say, well, this is a test  
4 environment, did you?

5           A.    No.  No.  We wrote it in 1995.

6           Q.    That's correct.  I apologize.

7                   When you wrote it in 1995, you didn't think to  
8 say, Well, this is just a test, did you?

9           A.    No.

10          Q.    You said it was actually deployed, right?

11          A.    That's correct.

12          Q.    And you say here in the present tense that the  
13 system gives responses directly back to the sender.

14                   Do you see that?

15          A.    Yes, I do.

16          Q.    Now, this -- this sentence as well is  
17 inconsistent with your direct testimony about your  
18 recollection of things given over 14 years later, right?

19          A.    Yes.

20          Q.    This sentence is saying that the program was  
21 live, and it directly responded to senders, right?

22          A.    Yes.

23          Q.    And you wrote that way back in 1995, right?

24          A.    Uh-huh.  Yes, eight months before the  
25 conference.

1 Q. And you didn't tell anybody at the conference  
2 that, oh, by the way, it never got deployed, and these  
3 statements in the article are actually not true, did  
4 you?

5           A. Well, these statements are true only to the  
6 extent of the test system that was never deployed, yes.

7 Q. Ms. Rice, you never told anyone at that  
8 conference that, in fact, the system was never deployed  
9 and these statements about how it reduces Chase --  
10 ChaseDirect's burden and how e-mails are directly mailed  
11 back, that none of that was actually happening, did you?

12               Never told anyone about that at the  
13 conference, did you?

14           A.     I never told anyone about that, and neither  
15 did Julie Hsu or Rosanna Piccolo that I can remember.

16 MR. VERHOEVEN: Let's go to Page 1514 of  
17 the AAA article -- AAAI article.

18                   Now, if we could bring out the  
19 paragraph -- or the -- on the left-hand column, Ryan,  
20 you see where it says: Application benefits? From  
21 there down to the bottom. Perfect.

22 Q. (By Mr. Verhoeven) Are you with me, Ms. Rice?

23 | A. Yes, I am.

24 | Q. Okay.

25 MR. VERHOEVEN: And then the -- could we

1 highlight the first sentence under application benefits?

2 Q. (By Mr. Verhoeven) And I'll read that for the  
3 record.

4 Quote, EZ Reader played a critical role in  
5 establishing ChaseDirect's ability to provide and  
6 maintain a responsive online marketing and service  
7 channel, close quote.

8 Do you see that?

9 A. Yes, I do.

10 Q. This is written in the present tense, right?

11 A. It is.

12 Q. Actually, I misspoke. This is written in the  
13 past tense, isn't it?

14 A. Ability to provide and maintain...

15 Yes, that's correct. Played, that would be  
16 past.

17 Q. So in this -- in this article that you wrote  
18 in 1995, you told all the folks reading the AAAI that  
19 the EZ Reader played a critical role in establishing  
20 Chase's -- ChaseDirect's ability to provide and maintain  
21 a responsive online marketing and service channel,  
22 right?

23 A. Yes, we did.

24 Q. And this sentence, as I read it, is saying  
25 that the EZ Reader's already deployed. Is that the way

1 you read it?

2 A. That's -- that's what it implies.

3 Q. Right. And you wrote that sentence in 1995 at  
4 about the time you were actually developing this  
5 program, right?

6 A. We expected to deploy shortly after that, yes.

7 Q. That's yes?

8 A. Yes.

9 Q. Okay. And would you agree with me that your  
10 testimony 14 years later on direct examination as to  
11 your recollection is inconsistent with this sentence as  
12 well?

13 A. It is.

14 MR. VERHOEVEN: Go down -- if we can go  
15 down to the next paragraph. You can leave that  
16 highlighted, Ryan. That's fine. Go down to the next  
17 paragraph and highlight the first sentence.

18 Q. (By Mr. Verhoeven) Quote, EZ Reader increased  
19 the speed of response to the customer.

20 Do you see that?

21 A. Yes, I do.

22 Q. And that's written in past tense as well,  
23 isn't it?

24 A. Increased, yes.

25 Q. And the response to the customer is a

1 reference to Chase's customers, right?

2 A. That implies Chase's customers, yes.

3 Q. And what you're saying here when you wrote  
4 this in 1995 to all those folks at the AAAI is that in  
5 the past tense, EZ Reader had achieved the ability to  
6 increase the speed of response to the customer, correct?

7 A. Yes. At the time, we thought it was going to.

8 Q. So that's a yes to my sentence (sic)?

9 A. Yes.

10 Q. Okay.

11 MR. VERHOEVEN: And then if we go down  
12 two sentences --

13 THE COURT: Mr. Verhoeven --

14 MR. VERHOEVEN: Yes.

15 THE COURT: -- before we move into a  
16 different area, let's take our morning recess at this  
17 time, okay?

18 MR. VERHOEVEN: Thank you, Your Honor.

19 THE COURT: All right. Ladies and  
20 Gentlemen, I'm going to excuse you at this time until  
21 10:25 for the morning recess. Remember my prior  
22 instructions, and don't talk about the case.

23 Have a nice recess.

24 LAW CLERK: All rise.

25 (Jury out.)

1                   THE COURT: All right. We'll be in  
2 recess until 10:25.

3                   (Recess.)

4                   (Jury in.)

5                   THE COURT: All right. Please be seated.  
6                   Ms. Rice, if you'll come on back around,  
7 ma'am.

8                   All right.

9                   MR. VERHOEVEN: Your Honor, may I briefly  
10 approach?

11                  THE COURT: Yes.

12                  (Bench conference.)

13                  MR. VERHOEVEN: I just wanted to give a  
14 heads up that I'm going to go into the witness signed a  
15 declaration with the PTO that -- that incorporates this  
16 AAAI -- article, yes.

17                  I'm not going to ask about inequitable  
18 conduct, Your Honor.

19                  THE COURT: Well, that's fair game.

20                  MR. VERHOEVEN: Okay. And one -- just to  
21 avoid objections, one really quick thing.

22                  I believe she also testified that the  
23 Chase people listed as inventors were not inventors.  
24 I'm not going to go into inequitable conduct, but I'd  
25 like to establish that, because we have competing



1 versions of events from the different inventors to show  
2 it goes to the bias and the credibility of the  
3 witnesses.

4 THE COURT: Well, I guess I don't  
5 understand the line of questioning you're --

6 MR. VERHOEVEN: For example, she  
7 testified at deposition that Mr. Angotti did not  
8 contribute anything to --

9 THE COURT: You're absolutely entitled to  
10 go into that.

11 MR. VERHOEVEN: I am? Okay. Thank you,  
12 Your Honor.

13 (Bench conference concluded.)

14 Q. (By Mr. Verhoeven) Ms. Rice?

15 A. Yes.

16 Q. The EZ Reader system was not tested for  
17 purposes of filing the patent application that led to  
18 the '947 patent, correct?

19 A. I don't have personal knowledge of that.

20 Q. Well, let's play -- let's play your answer at  
21 your deposition when I asked you that question or when  
22 we asked you that question.

23 This is from the March 2010 deposition,  
24 Page 154, Lines 15 through 18.

25 (Video clip playing.)

1                   QUESTION:  So just to be clear, based on  
2 your understanding, the testing was not done to enable  
3 the inventors to prepare the patent application?

4                   ANSWER:  Correct.

5                   (End of video clip.)

6           Q.     (By Mr. Verhoeven) So at your deposition, you  
7 said that was a correct statement, right?

8           A.     Yes, because it wasn't -- it wasn't done to do  
9 that --

10          Q.     Okay.

11          A.     -- basically.  It was done as part of our  
12 project.

13          Q.     Would you agree with me that the EZ Reader was  
14 not tested for the purpose of filing a patent  
15 application, correct?

16          A.     I would agree with that.

17          Q.     All right.  Now, let's go to Exhibit DX84 in  
18 your binder, please.

19                   Are you there?

20          A.     Yes, sir.

21          Q.     Okay.  If you turn to the fourth page of this  
22 document, Defendants' Exhibit 84, do you see the title  
23 up there?  It says Provisional Application for Patent  
24 Cover Sheet.

25          A.     Yes, I see that.

1 Q. Do you see that?

2 A. I see that.

3 Q. This was the first patent application that  
4 resulted in the '947 patent, right?

5 A. I'm unfamiliar with this document.

6 Q. Well, let's turn to the third page -- or two  
7 more pages back.

8 It says Additional Inventors Application  
9 Continue -- Applicants Continued.

10 Do you see that?

11 A. Yes, I do.

12 Q. Do you see you're listed as Inventor No. 3?

13 A. Yes.

14 Q. And if you turn to the next page, one more  
15 page over, please, and then you see it says AAAI '96,  
16 Thirteenth National Conference of Artificial  
17 Intelligence.

18 Do you see that?

19 A. Yes, I do.

20 Q. Then if you turn to the next page, do you  
21 recognize that document?

22 A. Yes, I do.

23 Q. And what is that document?

24 Let me ask the question a different way. That  
25 document is the AAAI article that we were just looking

1 at, right?

2 A. I would have to look through to see if  
3 everything is included in here.

4 Q. Is that the first page of it that we're  
5 looking at on the screen?

6 A. That's the first page of it, yes. That's the  
7 title page.

8 Q. All right. And if we go back to the very  
9 first pages of Defendants' Exhibit 84, you see up in the  
10 top left, it says Provisional Application. In the top  
11 left?

12 A. Yes, I see that.

13 Q. And do you see below that, it says application  
14 number?

15 A. Yes.

16 Q. And that ends in '494. Do you see that?

17 A. Yes.

18 Q. So this is the provisional application that  
19 was filed in connection with the patent on which you're  
20 listed as an inventor.

21 Would you agree with that?

22 A. Yes, but I've never seen it, though.

23 Q. So it's your testimony you never, ever saw  
24 this document?

25 A. I don't recall seeing this document.

1           Q.    Okay.  I'm going to refer to this as the  
2 provisional application, the '494 provisional  
3 application.  When I ask some questions going forward,  
4 you understand I'm referring to this document?

5           A.    Okay.

6           Q.    Okay.  Now, let's go back to DX260, which is  
7 the '947 patent.

8                   Are you there?

9           A.    Yes, I am.

10          Q.    Now, if you go to Column 1 of that patent and  
11 if you look at the very top paragraph of that patent, it  
12 says:  This application is based on and claims priority  
13 to U.S. patent application -- there's a bunch of numbers  
14 that end in '074 -- and then it says comma.  And then it  
15 says:  U.S. provisional application No. 60/'042,494.

16                   Do you see that?

17          A.    Yes, I do.

18          Q.    So that's saying that the application that  
19 issued in the patent claims priority to the U.S.  
20 provisional application, that was the '494 application  
21 we just looked at.

22                   Would you agree with that?

23          A.    It appears to say that.

24          Q.    Okay.  Now, let's go to -- and this is the  
25 '947 patent.  That's the patent at issue in this case,

1 right?

2 A. The '947 patent, yes.

3 Q. And you see at the bottom of the last column  
4 in this paragraph, it says, quote: Each of which are  
5 incorporated herein by reference for all purposes.

6 A. Yes, I see that.

7 Q. Do you see that?

8 A. Yes.

9 Q. So the '947 patent incorporates by reference  
10 U.S. Provisional Application '494, right?

11 A. It appears to say that, yes.

12 Q. And the U.S. Provisional Application '494 is  
13 the application that attaches the AAAI article, correct?

14 A. I don't know what you mean by attaching it.

15 Q. All right. Well, let's go back to DX84. This  
16 is a provisional application '494, right?

17 A. Okay. Yes.

18 Q. Okay. And doesn't it attach the AAAI article?

19 A. By that, are you saying that includes this  
20 AAAI article?

21 Q. Do you understand what attaches means?

22 A. Do you mean that the combined -- the documents  
23 are combined?

24 Q. I mean it's attached to the actual  
25 application.

1           A.     Okay.  So it was somehow like labeled as an  
2 attachment or stapled to it or something?

3           Q.     I mean that it comes together with the actual  
4 application; it's attached to it.

5                     Do you not understand that?

6           A.     If it's -- if it's attached, I guess that  
7 means it's along with it.

8           Q.     Yes.  Do you agree with that?

9           A.     Yes.

10                   MR. FENSTER:  Excuse me, Your Honor.  May  
11 we approach briefly?

12                   THE COURT:  Yes.

13                   (Bench conference.)

14                   MR. FENSTER:  I'm not sure where this is  
15 going -- this line of questioning is going, but I think  
16 it goes into inequitable conduct.  I think that what  
17 he's getting at is that she submitted a false statement  
18 and it is attached --

19                   THE COURT:  That's right.  And I'm going  
20 to allow it for her credibility.

21                   (Bench conference concluded.)

22           Q.     (By Mr. Verhoeven) Okay.  So let's go back to  
23 the patent again -- this is DX260 -- and back to Column  
24 1 that we were just looking at.

25                   MR. VERHOEVEN:  Bring that back up again,

1 Ryan, and highlight the state -- the words U.S.

2 provisional application No. '494.

3 Q. (By Mr. Verhoeven) Do you see that, Ms. Rice?

4 A. Yes.

5 Q. And then the last clause, do you see that?

6 A. Yes.

7 Q. So this is saying the provisional '494

8 application is incorporated into the patent by

9 reference, correct?

10 A. Okay.

11 Q. Okay. Now, that '494 application attaches the

12 AAAI article, right?

13 A. It appears to be, yes.

14 Q. Okay. Now, let's go to DX4 in your binder,

15 please.

16 A. Okay.

17 Q. Now, if you turn to Page 2 of this exhibit.

18 MR. VERHOEVEN: Go to Page 2, Ryan,

19 please, and highlight the signature there.

20 Q. (By Mr. Verhoeven) That's your signature,

21 Ms. Rice, right?

22 A. Yes, it is.

23 Q. And you read this declaration before you

24 signed it?

25 A. Yes.



1 Q. And you made sure it was truthful?

2 A. Yes, it was truthful as much as I could tell.

3 Q. Okay. Now, let's go back to the first page.

4 And do you see the second table there?

5 MR. VERHOEVEN: If we could bring that  
6 out, please.

7 Yeah, there you go.

8 Q. (By Mr. Verhoeven) And you see on the  
9 left-hand column, it says application number?

10 A. Yes.

11 MR. VERHOEVEN: Would you highlight that,  
12 please, Ryan?

13 Q. (By Mr. Verhoeven) Then below that, there is a  
14 number for the provisional '494 application.

15 Do you see that?

16 A. Yes, I do.

17 Q. Okay. And, again, that's the application that  
18 has the AAAI article attached, right?

19 A. Uh-huh. Yes.

20 Q. But above that, on this document you've  
21 signed, you state, quote: I hereby claim the benefit  
22 under Title 35 United States Code, Section 119(e) of any  
23 United States provisional application listed below.

24 Do you see that?

25 A. Yes, I do.

1           Q.    So when you signed this document, you were  
2 claiming the benefit of the provisional application that  
3 included the AAAI article, right?

4           A.    Okay.

5           Q.    Is that right?

6           A.    Yes.

7           Q.    Okay.  If we go to the second page and  
8 highlight the paragraph between the two tables, you say,  
9 quote:  I further declare that all statements made  
10 herein of my knowledge are true and all statements made  
11 on information and belief are believed to be true.

12                   Do you see that?

13          A.    Yes, I do.

14          Q.    Now, you told the Patent Office -- you  
15 submitted this declaration to the Patent Office, right?

16          A.    I didn't personally do that, no.

17          Q.    But somebody did, right?

18          A.    Somebody did, yes.

19          Q.    Okay.  And you knew it was going to be  
20 submitted to the Patent Office, right?

21          A.    I only knew after it was submitted to the  
22 Patent Office.

23          Q.    You read it before you signed it, right?

24          A.    I don't remember whether I signed this before  
25 the patent application went in or after.

1 Q. Did you read this document before you signed  
2 it?

3 A. Yes. In 1998, it looks like I did.

4 Q. And you were telling the Patent Office, when  
5 you signed this, that the provisional application and  
6 the documents attached to it were true, weren't you?

7 A. Yes.

8 Q. Okay. And the provisional application  
9 attaches the AAAI article, right?

10 A. Yes, it appears to be.

11 Q. So you told the Patent Office, when you signed  
12 this way back in the '90s, statements in that article  
13 were true, didn't you?

14 A. It looks like that's what it involves.

15 Q. Yet over 14 years later, you're testifying on  
16 direct examination that all those statements we went  
17 through before the break, in that article, were not  
18 true; is that right?

19 A. That's correct.

20 Q. This is inconsistent about your direct  
21 testimony as well, isn't it?

22 A. Looks like it is, yes.

23 Q. Let's go back to the patent, Exhibit 260.  
24 If you could go to the last page of that exhibit.

25 MR. VERHOEVEN: And if we could just

1 highlight...

2 Q. (By Mr. Verhoeven) Now, you see here, there is  
3 a certificate of correction, right?

4 A. Yes, I do.

5 Q. And you see that the certificate of correction  
6 adds some additional inventors.

7 Do you see that?

8 Under the title page, it says: Inventors,  
9 please insert, Anthony M. Angotti and Rosanna Piccolo  
10 and Fred Cohen.

11 Do you see that?

12 A. Yes, I do. It was dated 2005.

13 Q. And you understand that they are -- as a  
14 formal matter, they are listed as co-inventors on this  
15 patent, right?

16 A. Yes, I do.

17 Q. Okay.

18 A. And this document was dated in 2005.

19 Q. Now, is it your testimony that, in fact,  
20 Mr. Angotti is not -- should not be an inventor on this  
21 patent?

22 A. No, it's not.

23 MR. VERHOEVEN: I'd like to play, Your  
24 Honor, from Page 27, Lines 2 through 8 of Ms. Rice's  
25 deposition taken in March of 2010.

1 (Video clip playing.)

2 QUESTION: And do you know why  
3 Mr. Angotti was listed as an inventor of the '947  
4 patent?

5 ANSWER: No.

6 QUESTION: Do you think that Mr. Angotti  
7 was an inventor of the '947 patent?

8 ANSWER: No.

9 (End of video clip.)

10 Q. (By Mr. Verhoeven) You don't think that  
11 Mr. Angotti contributed anything to the '947 patent, do  
12 you?

13 A. At the time this deposition was taken, I was  
14 thinking only of the EZ Reader application.

15 Q. Ms. Rice, isn't it correct that you don't  
16 think that Mr. Angotti contributed anything to the '947  
17 patent?

18 A. I can only say that at the time of the  
19 deposition, when I looked at the patent, it only had  
20 Julie Hsu and my name on it.

21 Q. And you hadn't read the whole patent at that  
22 time, had you?

23 A. The whole patent wasn't modified until 2005,  
24 and that was not an attachment on the patent that I was  
25 looking at.

1           Q.    You had never read the whole patent as of  
2 March 2010, had you?

3           A.    No.  I haven't ever read the entire, every  
4 word of the patent.

5           Q.    And it's your testimony that you can't think  
6 of anything that Mr. Angotti contributed to the '947  
7 patent, correct?

8           A.    I don't have personal knowledge of what he  
9 might have contributed to the patent.

10          Q.    So sitting here today, if I were to ask you  
11 what did Mr. Angotti contribute, your answer would be I  
12 don't know, right?

13          A.    Right.  I don't know.

14          Q.    In fact, you don't even think Mr. Angotti was  
15 part of the development of EZ Reader, do you?

16          A.    When you say part of the development, I assume  
17 you're only talking about the technical task, and in  
18 that sense, no, he wasn't a part of it.

19          Q.    Did you ever tell anyone that you didn't think  
20 Mr. Angotti should be listed as an inventor?

21          A.    I don't recall when or where, but I probably  
22 did.

23          Q.    You did tell someone, didn't you?

24          A.    I can't remember.

25                   MR. VERHOEVEN:  I would like to play from

1 Ms. Rice's deposition, Page 27, Lines 18 through 22.

2 (Video clip playing.)

3 QUESTION: Did you ever tell anyone that  
4 you thought that -- that you thought that Mr. Angotti  
5 was not an inventor of the '947 patent?

6 ANSWER: Yes.

7 QUESTION: And who did you tell?

8 ANSWER: David.

9 (End of video clip.)

10 Q. (By Mr. Verhoeven) That's Mr. Pridham?

11 A. Yes. That was counsel.

12 Q. Sitting in the courtroom today?

13 A. I'm sorry?

14 Q. Sitting in the courtroom today?

15 A. Yes.

16 Q. Now, Ms. Piccolo is also listed here.

17 THE COURT: Counsel, approach.

18 (Bench conference.)

19 THE COURT: That was directly covered by  
20 my motion in limine.

21 MR. VERHOEVEN: I'm sorry, Your Honor.  
22 I'm trying to avoid that as much as I could. I was  
23 asking her earlier about Mr. Pridham. I'm sorry. I  
24 thought it was important, the fact that she had told  
25 others about it.

1                   THE COURT: Well, I understand that, but  
2 others can be a lot of people other than Mr. Pridham.

3                   MR. VERHOEVEN: That's the only one she  
4 testified to, Your Honor.

5                   THE COURT: I didn't know that. That's  
6 why you should approach the bench.

7                   MR. VERHOEVEN: I'm sorry. All I can do  
8 is I apologize. I caught that earlier one, and I  
9 thought, based on our conversation, that this would be  
10 okay.

11                  THE COURT: Which earlier one are you  
12 referring to?

13                  MR. VERHOEVEN: Well, the consulting  
14 agreement she signed with him.

15                  THE COURT: You approached the bench on  
16 that, and I allowed it.

17                  Step back. Move on to something else.

18                  MR. VERHOEVEN: I will, Your Honor.

19                  THE COURT: I will take it up at the  
20 break.

21                  (Bench conference concluded.)

22                  THE COURT: Ladies and Gentlemen, you  
23 need to disregard that last portion of testimony that  
24 you heard that was solicited in violation of the Court's  
25 order.



1                   Occasionally when a party does something  
2 that violates one of the Court's orders, he does so  
3 because he perceives there to be some problem with his  
4 case. And I don't know whether that's what happened in  
5 this case or not, but you can consider that in the  
6 evaluation of the testimony.

7                   But that last portion of the testimony  
8 you just heard was elicited in violation of one of the  
9 Court's orders.

10                  Proceed.

11           Q.     (By Mr. Verhoeven) Now, if we go back to  
12 Exhibit 260, the last page, please, do you see that  
13 Ms. Piccolo is also listed as an inventor?

14           A.     Yes, I do.

15           Q.     And is it correct that you don't believe that  
16 Ms. Piccolo actually contributed to the '947 patent as  
17 well?

18           A.     I know she was not involved in the technical  
19 development, but I don't know of any other contribution  
20 she may have made.

21           Q.     Do you think that she was involved in the  
22 development in the '947 patent?

23           A.     She helped us develop the system in terms of a  
24 managerial role and testing.

25           Q.     I would like to play an excerpt from your

1 deposition, Page 27, Lines 10 through 13.

2 (Video clip playing.)

3 QUESTION: What about Ms. Piccolo? Do  
4 you think that Ms. Piccolo was an inventor of the '947  
5 patent?

6 ANSWER: No.

7 (End of video clip.)

8 Q. (By Mr. Verhoeven) And the last person listed  
9 here is Mr. Cohen.

10 Do you see him?

11 A. Yes.

12 Q. Is it correct that you don't know anything  
13 that Mr. Cohen did in relation to the '947 patent?

14 A. I don't know of what he may have done to get  
15 his name on the '947 patent, but I was thinking of the  
16 '947 patent, meaning the EZ Reader application.

17 Q. Sitting here today, do you know anything that  
18 Mr. Cohen did in relation to the '947 patent?

19 A. I'm not personally aware of what he may have  
20 done to have his name on the patent.

21 Q. Your testimony is that Mr. Cohen wasn't even  
22 part of the development of EZ Reader?

23 A. Right. I didn't know Fred Cohen.

24 Q. Your testimony is that he wasn't part of the  
25 development of EZ Reader?

1           A.    As far as I know, I don't know what Chase may  
2 have done in the background in terms of doing anything  
3 with the '947 patent.

4                   He was not part of our development team, and  
5 his name wasn't in any of the managerial information  
6 that I have.

7           Q.    I'd like to switch subjects now and go to  
8 DX81.

9                   Now, we saw this document on direct exam,  
10 correct?

11          A.    Yes.

12          Q.    And the title of this is EZ Reader User's  
13 Guide and Reference Manual?

14          A.    Yes.

15          Q.    You said on direct examination in your direct  
16 testimony to the jury that this was a draft.

17                   Do you remember that?

18          A.    Yes, I do.

19          Q.    It doesn't say it's a draft, does it?

20          A.    No, it doesn't. It also says it was written  
21 by Chase Manhattan Bank, but it was written by  
22 Brightware.

23          Q.    Doesn't say it's a draft, does it?

24          A.    No, it doesn't, sir.

25          Q.    If you go to the second page up in the top

1 right-hand corner, the document has a date, correct?

2 A. Yes.

3 Q. And what is that date?

4 A. February, 1996.

5 Q. This document -- do you have any reason to  
6 dispute that this document is properly dated February  
7 6th, 1996?

8 A. No. This draft was dated probably around  
9 there.

10 Q. Now, if you'd turn to Page 15, please.

11 A. Okay.

12 Q. And you see there, it says EZ Reader  
13 Version 1.0 Environment?

14 A. Yes.

15 Q. And then you see the first paragraph to the  
16 right.

17 Do you see that?

18 A. Yes, I see that.

19 MR. VERHOEVEN: If you would just  
20 highlight that, please, Ryan.

21 Q. (By Mr. Verhoeven) It says, quote: EZ Reader  
22 Version 1.0 was developed using ART\*Enterprise 2.0 for  
23 Windows, interfacing with Lotus Notes via the VIM  
24 protocol and Notes API, close quote.

25 Do you see that?

1 A. Yes, I do.

2 Q. Past tense, right?

3 A. That's past tense listed out.

4 Q. So this document dated February of 1996 states  
5 that EZ Reader 1.0 had already been developed, doesn't  
6 it?

7 A. EZ Reader Test Version 1.0 was developed, yes.

8 Q. It doesn't say test version, does it?

9 A. No.

10 Q. It just says EZ Reader Version 1.0, right?

11 A. Yes, it does.

12 Q. It says it was developed, in the past tense,  
13 correct?

14 A. That's correct.

15 Q. Now, I believe you testified on direct that  
16 the notice -- the Lotus Notes interface was not  
17 functional, right?

18 A. That's correct.

19 Q. But this says that it was developed, quote,  
20 interfacing with Lotus Notes.

21 Do you see that?

22 A. Yes.

23 Q. That's inconsistent with your direct  
24 testimony, right?

25 A. It's inconsistent, but...

1 Q. Yes?

2 A. It's only inconsistent because this was meant  
3 to be a training manual that was to be distributed in  
4 the future.

5 Q. It says it's a user's guide and reference  
6 manual, right?

7 A. Yes.

8 Q. It doesn't say it's a draft or it's to be  
9 distributed in the future, does it?

10 A. No, it doesn't say that.

11 Q. Okay. And this sentence is inconsistent with  
12 what you testified to on direct exam, right?

13 A. Yes.

14 MR. VERHOEVEN: If we could go back to  
15 that page, Ryan.

16 I'm sorry. Page 18. And bring up the  
17 paragraph retrieval.

18 Q. (By Mr. Verhoeven) Do you see that sentence  
19 there?

20 A. Yes, I do.

21 Q. It says, quote: Chase's corporate e-mail  
22 router passes the message to ChaseDirect's Lotus Notes  
23 mail management system. EZ Reader checks the Lotus  
24 Notes mail database for new mail throughout the day.

25 Do you see that?

1           A.     Yes, I do.

2           Q.     And this is in the February 1996 document.  
3 It's talking in the present tense, right?

4           A.     Yes. It's talking in the present tense.

5           Q.     This document is saying that Chase is using  
6 the EZ Reader, right?

7           A.     Yes, it does.

8           Q.     And it says that Lotus Notes is working,  
9 doesn't it?

10          A.     Yeah, it appears to say that it is.

11          Q.     So this document is dated back in 1996 is  
12 also -- excuse me -- let me start over.

13                 This sentence in the document from 1996 is  
14 also inconsistent with your recollection on direct  
15 testimony today, 14 years later, right?

16          A.     Exactly.

17          Q.     Okay. Let's go to DX480.

18                 Do you recognize this document as well?

19          A.     Yes, I do.

20          Q.     This is a document that you were shown on  
21 direct examination, correct?

22          A.     Correct.

23          Q.     Now, this is the document that says -- that  
24 Counsel pointed you to that said EZ Reader is now  
25 approved for production installation at Chase.

1                   MR. VERHOEVEN: That's in the first  
2 paragraph, Ryan. Could you bring that up, please?

3           Q.     (By Mr. Verhoeven) Do you see that?

4           A.     Yes, I do.

5           Q.     And that's -- you looked at that on your  
6 direct exam, correct?

7           A.     Uh-huh. Yes.

8           Q.     Now, let's go back to the document and to the  
9 paragraph that starts with to meet our long-term  
10 business requirements.

11          A.     Okay.

12          Q.     And that says: To meet our (sic) long --

13                   MR. VERHOEVEN: If we could just  
14 highlight that first sentence, please.

15          Q.     (By Mr. Verhoeven) To meet our (sic) long-term  
16 business requirements, the EZ Reader application is  
17 designed to be easily expandable so that it could  
18 interpret an endless variety of messages.

19                   Do you see that?

20          A.     Yes, I do.

21          Q.     That's talking about expanding the existing EZ  
22 Reader application, isn't it?

23          A.     Yes. It's talking about expanding it.

24          Q.     Now, Ms. Rice, I'd like to switch subjects  
25 again.



1           Is it correct that you have a consulting  
2 agreement with the predecessor, Bright Response?

3           A.     Who would that be?

4           Q.     Are you aware of having any consulting  
5 agreement related to this case in any way?

6           A.     Yes. Yes, I do. I do have a consulting  
7 agreement.

8           Q.     All right.

9                     MR. VERHOEVEN: Let's go to DX3, please.

10          Q.     (By Mr. Verhoeven) And do you see the first  
11 paragraph?

12          A.     Yes, I do.

13          Q.     It says: This letter confirms Merchant &  
14 Gould's agreement with you on behalf of Firepond.

15                     What's Firepond?

16          A.     Firepond was the company that bought  
17 Brightware, I think.

18          Q.     So it says: This letter confirms Merchant &  
19 Gould's agreement with you on behalf of Firepond, Inc.,  
20 to retain you as a consultant with regard to U.S. Patent  
21 No. 6,182,059 and 6,411,947.

22                     Do you see that?

23          A.     Yes, I do.

24          Q.     And the '947, that's the patent in this case,  
25 right?

1           A.     '947, yes.

2           Q.     And so you were retained as a consultant under  
3 this agreement; is that correct?

4           A.     Yes, because of my unique knowledge about it,  
5 about the EZ Reader application.

6           Q.     If you turn to the second page of this  
7 document, please, you see the signature there under Amy  
8 Rice?

9           A.     Yes, I do.

10          Q.     Is that your signature?

11          A.     That's my signature.

12          Q.     Now, if you go back to the first page, the  
13 first paragraph.

14                   MR. VERHOEVEN: I'm sorry. Second  
15 paragraph, Ryan.

16          Q.     (By Mr. Verhoeven) You'll see that this talks  
17 about what you will charge for your time?

18          A.     Charge for my time, yes.

19          Q.     Okay. And you did some work in connection  
20 with this consulting agreement, didn't you?

21          A.     As I recall, yes.

22          Q.     And you were compensated for that work?

23          A.     Yes, I was.

24          Q.     And this employment has never been terminated;  
25 is that right?

1           A.    As far as I know it has not, but I haven't  
2 talked with them in a very long time.

3           Q.    Haven't talked with who?

4           A.    Merchant & Gould.

5           Q.    Okay.  So let me conclude, Ms. Rice, by asking  
6 you, we've looked at some documents that you've admitted  
7 are inconsistent with your direct testimony.  Those  
8 documents were created in or around the time we're  
9 talking about, '95/'96, right?  Correct?

10          A.    Most of them are, I guess.

11          Q.    The documents that the user manual was in  
12 February of '96, right?

13          A.    Yes, that one was.

14          Q.    The AAAI article was in '95, correct?

15          A.    Yes; that's right.  '95/'96.

16          Q.    And those documents say that the EZ Reader  
17 system was deployed, right?

18          A.    That's correct.

19          Q.    And those documents say that Lotus Notes was  
20 working, right?

21          A.    Those do say that it was working.

22          Q.    And those documents say that Chase was able to  
23 achieve significant efficiencies based on its already  
24 deployed technology, correct?

25          A.    Yes, prospectively, we believed that at the

1 time it was written.

2 Q. Now, you admit that the testimony you gave on  
3 direct is inconsistent with those documents, correct?

4 A. It is inconsistent, yes.

5 Q. And you admit that?

6 MR. VERHOEVEN: Withdraw the question.

7 Q. (By Mr. Verhoeven) And your testimony you gave  
8 today is based on your recollection, right?

9 A. Yes.

10 Q. Over 14 years later?

11 A. Yeah. Kind of hard.

12 Q. Thank you, Ms. Rice.

13 MR. VERHOEVEN: I have no further  
14 questions.

15 THE COURT: Redirect, or is there  
16 additional cross?

17 MR. ROOKLIDGE: Your Honor, Mr. Verhoeven  
18 has asked all the questions that Yahoo! would have as  
19 well, so no further questions.

20 THE COURT: Okay. Redirect?

21 MR. FENSTER: Thank you.

22 REDIRECT EXAMINATION

23 BY MR. FENSTER:

24 Q. Ms. Rice, did anything that you heard from the  
25 questioning from Mr. Verhoeven or any of the documents

1 that you looked at shake your confidence about your  
2 belief regarding whether EZ Reader was deployed?

3 A. Not at all.

4 Q. So, first, he talks about the article that was  
5 written in 1995.

6 Now, is it your testimony that the IAAI --  
7 AAI --

8 A. AAAI.

9 Q. Or the AAAI article was written in '95?

10 A. Yes.

11 Q. Now, in 1995, that article was written past  
12 tense, right?

13 A. Yes.

14 Q. That it's already in place, right?

15 A. Yes; that's correct.

16 Q. And they even said -- and Mr. Verhoeven  
17 pointed out -- that the Chase Bank website was already,  
18 past tense, right?

19 A. The Chase Bank website? You mean when it  
20 opened up?

21 Q. Yes.

22 A. Yes.

23 Q. You remember he showed you in the article in  
24 1995 that referred to the Chase Bank being live, in the  
25 past tense?

1           A.     Yes.

2           Q.     Now, was Chase Bank live in 1995?

3           A.     The Chase Bank internet website?

4           Q.     Yes.

5           A.     As I recall, it went into -- it became live at  
6 the end of March -- near the end of March.

7           Q.     And -- excuse me one second.

8                   So the website went -- the website went live  
9 in March '96?

10          A.     That's what I was told.

11          Q.     And yet the Chase article in 1995 referred to  
12 it in the past tense.

13                  Why? Was it a lie in the article?

14                  When you wrote in the AAAI article that the  
15 website was already live, past tense, why did you write  
16 that in 1995?

17          A.     I don't believe I wrote that the website was  
18 live. I wrote that the EZ Reader application was live.

19          Q.     Okay. And was it actually live in 1995?

20          A.     It was not.

21          Q.     Now -- and so was it a lie when you wrote it?

22          A.     No.

23          Q.     Why not? Why did you write that in 1995? Why  
24 wasn't it a lie?

25                  Mr. Verhoeven wants everybody to believe that

1 was a lie in 1995. Tell us why it wasn't.

2 A. It was because the -- it was written for the  
3 EZ Reader application, which was the knowledge base,  
4 because we hadn't finished the testing or the Lotus  
5 Notes API yet.

6 Q. And was it supposed to be published in 1995?

7 A. The website?

8 Q. I'm sorry. It was a bad question.

9 Was the article supposed to be published in  
10 1995?

11 A. No. It was -- it was meant for publication at  
12 the conference in August of '96.

13 Q. Now, he asked you at the conference whether  
14 you gave a talk.

15 Do you recall that?

16 A. Yes.

17 Q. And you did give a talk at the conference in  
18 August 1996, right?

19 A. Yes, I did, the one with Rosanna Piccolo and  
20 Julie Hsu.

21 Q. Now, did you read the article during your  
22 presentation, or did you give a PowerPoint?

23 A. I gave a PowerPoint presentation about the  
24 article, because everybody already had a copy of the  
25 article.

1           Q.     Okay.  And is this -- and was that Exhibit 861  
2 that we looked at earlier?

3                     Is this is a copy of your PowerPoint  
4 presentation?

5           A.     It appears to be.

6           Q.     Okay.  And did you, in your speech, say that  
7 it had been deployed in August with -- when you gave  
8 your speech --

9                     MR. FENSTER:  Strike that.  Sorry.

10          Q.     (By Mr. Fenster) When you gave your speech in  
11 August 1996 at the AAAI conference, did you tell the  
12 audience that it had been deployed live at Chase?

13          A.     No, I don't recall ever saying that.  I  
14 don't -- I don't think I would have, because it wasn't.

15          Q.     And does your PowerPoint presentation anywhere  
16 say that it actually went live?

17          A.     No, I don't think so.

18                     Let me look.  Excuse me.

19                     Projections of the business problem was; why  
20 our products were suitable for solving that business  
21 problem of the e-mail -- too much e-mail.

22                     It showed business benefits that would be  
23 expected from deploying the application.  And those were  
24 based on our early testing, and also on our testing  
25 formally with the Chase e-mails that they gave us, the



1 200.

2 Q. Now, going back to your article, when you  
3 wrote it in 1995, when you wrote the article in 1995,  
4 what phase of development was the EZ Reader system in?

5 A. We were close to putting it in production.

6 Q. Back in 1995?

7 A. Yeah. We expected to deploy the application  
8 in early '96.

9 Q. Now, Mr. Verhoeven asked you about your  
10 knowledge of the testing that went on, right?

11 And his questions were a little bit vague  
12 because he didn't ask you about when. He didn't give  
13 you a timeframe, did he?

14 A. Huh-uh.

15 Q. Now, when -- when did you leave Brightware?

16 A. Well, Brightware spun off again to become  
17 Mindbox. I left the organization as it was in 2001.

18 Q. And when did you stop working on the Chase  
19 project?

20 A. It was like late summer '96.

21 Q. Was it after the critical date?

22 A. Yes. It was after that date.

23 Q. It was sometime after the critical date, you  
24 left the Chase project?

25 A. Yes. I mean, I was still involved in --

1 because it was my baby, you know. I mean, I was  
2 involved in the aspect, if anyone had a question, that  
3 they could ask me about it.

4 Q. So then after you left the Chase project, then  
5 would you have any basis for knowing whether it was  
6 deployed after that?

7 A. Absolutely. I mean, we were a very close  
8 team, and I would have known.

9 Q. Okay. And up until the time that you left  
10 Chase, would you have known whether it was deployed  
11 prior to that?

12 A. Oh, sure.

13 Q. And were you familiar with the testing that  
14 happened up until then?

15 A. I guess most of it, until, you know, I left  
16 the test lab.

17 Q. Now, do you remember that Mr. Verhoeven asked  
18 you if you remembered any test documents and he showed  
19 you a portion of your deposition saying that you didn't  
20 recall any test documents? Let me just put it up.

21 Do you remember he showed you -- or he played  
22 your deposition: Do you have any documentation of the  
23 testing that you're referring to in that paragraph?

24 And they stopped after the answer: I can't  
25 remember whether or not I got actual documentation.

1           A.     Yes.

2           Q.     He didn't read a few lines down that says:

3                   QUESTION:   Okay.

4                   ANSWER:   I do remember test

5 documentation.   It could have been from Rochester, but

6 I'm not sure.

7           A.     Yes.

8           Q.     He didn't show you that, did he?

9           A.     (No response.)

10          Q.     Now, I want to ask you a little bit about your  
11 declaration that you signed with the Patent Office,  
12 okay?

13                   Now, that was signed when the patent  
14 application was filed in '97?

15          A.     I believe so.

16          Q.     Okay. And that attached in reference to --  
17 referenced the provisional article, didn't it -- or the  
18 provisional application, didn't it?

19          A.     Yes. From what I saw today, yes.

20          Q.     Now, did the provisional application describe  
21 the functionality of the EZ Reader?

22          A.     It described the proposed functionality of EZ  
23 Reader --

24          Q.     Okay.

25          A.     -- that we were seeing in our test

1 environment.

2 Q. And when you signed that declaration, were you  
3 focused on the fact that it hadn't been -- the statement  
4 saying that it had been deployed when it hadn't?

5 A. Not at all.

6 Q. Did you intend -- did you intend to mislead  
7 anybody in signing that declaration?

8 A. No.

9 Q. The declaration actually says that what we're  
10 doing is referring and claiming priority to a  
11 provisional application, right?

12 MR. VERHOEVEN: Objection, leading.

13 THE COURT: Sustained.

14 Q. (By Mr. Fenster) What did you understand the  
15 declaration to actually be -- what did you understand  
16 that you were declaring to?

17 A. I was -- I understood I was declaring about  
18 the EZ Reader product, the application.

19 Q. And that the application claimed priority to  
20 the earlier one?

21 A. Yes.

22 Q. Now, are you familiar with patents? I mean --  
23 strike that.

24 Are you a patent lawyer?

25 A. No, I'm not a patent lawyer.

1           Q.    And who handled the preparation of the patent  
2 application?

3           A.    The original patent attorney firm was Townsend  
4 Townsend and Crew.

5           Q.    Okay.  And were you involved in drafting the  
6 claims for the patent?

7           A.    No, I wasn't involved in that.

8           Q.    Now, do you know the legal test for  
9 inventorship?

10          A.    The legal test for inventorship.  I mean, I  
11 could speculate on what I know, but I can't say for sure  
12 what I know that is.

13          Q.    Who actually filed the original patent -- the  
14 original provisional application?  Was it Chase or  
15 Brightware?

16          A.    I think it was Chase.  I don't know if they  
17 filed it, no.  Chase and Brightware filed them pretty  
18 much like at the same time, so I don't know who was  
19 first.

20          Q.    Okay.  Did you determine who should be listed  
21 as -- as inventors on the patent?

22          A.    No, I didn't determine that.

23          Q.    And who did determine that?

24          A.    I suppose the patent lawyers did.

25          Q.    Now, Mr. Verhoeven referenced that you had a

1 consulting agreement at one time?

2 A. Yes.

3 Q. Now, had you always had -- have you always  
4 been fully employed throughout this period?

5 A. Can you specify what period you're talking  
6 about?

7 Q. Sure. Since you were hired as a -- since you  
8 were retained as a consultant, do you have another job,  
9 a day job?

10 A. Sometimes I did, and sometimes I didn't.

11 Q. Okay. So have you been retained as a  
12 consultant before?

13 A. No, not before that that I can remember.

14 Q. Do you get -- were you getting compensated for  
15 your time?

16 A. At what period of time?

17 Q. Why did you enter into the consulting  
18 agreement, that consulting agreement that he referred  
19 to?

20 A. I was -- I was asked -- I was questioned about  
21 what my knowledge was of EZ Reader, and they said: Oh,  
22 sounds good. We want to -- we want to dig into what you  
23 know about your experience with Chase and Brightware.

24 Q. Okay. And why did you -- why was it  
25 reasonable for you to get paid for that?

1           A.    They offered to pay, and I accepted.

2           Q.    Okay.  Has your -- has your payment in any way  
3 ever been dependent upon your testimony or what you say?

4           A.    No.  I understood -- understand that that is  
5 strictly to be separate.

6           Q.    And when you came here today, you took an  
7 oath.

8           A.    Yes, I did.

9           Q.    And you swore to tell the truth.

10          A.    Yes -- well, yesterday I did, yes.

11          Q.    Okay.

12          A.    But it's -- today, yeah.

13          Q.    You understand you're still under oath?

14          A.    Yes.  I swear to tell the truth, and I tried  
15 to tell the whole truth.

16          Q.    And did you tell the truth today?

17          A.    Yes, I did.

18          Q.    Now, in the article that you wrote, this was  
19 written prospectively?

20          A.    That means --

21          Q.    I'm sorry.  The AAAI article you wrote in 1995  
22 for publication later?

23          A.    It was meant to be published much later.  So  
24 prospectively, if it's that definition, yeah.

25          Q.    Now, were you involved in negotiating the

1 submission of the article or the acceptance with the  
2 AAAI?

3 A. Yes, I was.

4 Q. Okay.

5 A. I submitted drafts, and, you know, several  
6 entities had to approve it and then select it for an  
7 award.

8 Q. Now, we looked at the EZ Reader reference  
9 manual. Tell me a little bit about the preparation of  
10 documentation that goes along with software at  
11 Brightware.

12 When you were at Brightware, what was the  
13 policy with respect to preparing documentation for  
14 software?

15 A. It was an option that our customers could  
16 choose for us to write for them, and Chase chose for us  
17 to write all of their end-user documentation.

18 Q. And how long does it take to write  
19 documentation?

20 A. Longer than you think. Well, longer than you  
21 plan, usually.

22 For a document that size, I mean, it goes  
23 through several iterations. You write an original  
24 draft, you give it to the customer, and they -- you  
25 know, they go, we don't understand what this means, and



1 then you go back and change it.

2 Q. And do you start writing the documentation  
3 before it's actually going to be given to the customer?

4 A. Usually, we start writing it a few weeks  
5 before.

6 In this particular case, we wrote it because  
7 we didn't have the information we needed to write any  
8 other technical interfaces with the EZ Reader product.

9 Q. Okay. Now, Mr. Verhoeven asked you a lot of  
10 questions about whether your test -- whether documents  
11 were inconsistent with your testimony. Your testimony  
12 on direct was as to what -- I'll withdraw that line.

13 Ms. Rice, when you look at this timeline, you  
14 see the critical date of April 3rd, 1996. Can you tell  
15 the jury with absolute conviction that you know whether  
16 or not EZ Reader was deployed before April 3, 1996?

17 A. Absolutely not. I mean, with conviction, yes.  
18 It was not deployed before that date.

19 Q. And -- and with all the documents that we've  
20 seen that were written, the AAAI article and the EZ  
21 Reader reference manual, how can you be so sure 14 years  
22 later?

23 A. Well, it was a very important application that  
24 I always will remember. You know, I kept a lot of  
25 documentation on it over the years just to go back and

1 look at.

2           So I'm sure because the testing hadn't been  
3 right up to the accuracy that they wanted. They wanted  
4 99 percent to 100 percent accuracy. And Chemical Bank  
5 was, you know, telling our bosses what to do.

6           Everything was up in the air at the time.

7           And API to Lotus Notes, which was their e-mail  
8 system, was not written by that time.

9           Q.    Now, since you've been involved with this case  
10 and preparing for trial, have you had the opportunity to  
11 review a bunch of documents that were contemporaneously  
12 along this timeframe?

13          A.    Yes, I have.

14          Q.    So are you relying only on your recollection  
15 from something 14 years ago?

16          A.    In preparing for this, I was supplied with all  
17 the documents that I was able to find about EZ Reader.

18          Q.    And what did those documents tell you about  
19 whether or not it was deployed? What did they -- did  
20 they refresh your recollection? And if so, how?

21          A.    Those documents told me that -- well, it was  
22 kind of conflicting for me, because I read the paper,  
23 and it said it was deployed, and then I saw it in the  
24 documentation that it was impossible to have been  
25 deployed.

1           So in looking at the date -- dates on my  
2 handwritten notes and my timelines and my project plans  
3 and e-mails and things like that, I -- I was just  
4 surprised that the timeline was that way.

5           Q.     Okay. And when you see the document 861, that  
6 it was approved for production, what did that tell you?  
7 What did the actual document tell you about whether --  
8 when EZ Reader went -- whether it was deployed or not?

9           A.     We were --

10                   MS. DOAN: Objection.

11                   THE COURT: Excuse me.

12                   Yes?

13                   MS. DOAN: Objection, Your Honor,  
14 leading, and the document can speak for itself.

15                   THE COURT: Overruled.

16           A.     We were asked to supply that e-mail to Chase.  
17 I was directed by my management to write an e-mail to  
18 Chase saying that the application was approved for  
19 production.

20           Q.     (By Mr. Fenster) Okay. And what did that tell  
21 you about whether or not it had been deployed by that  
22 time, just four days before the critical date?

23           A.     It told me that they were very enthusiastic  
24 about the application based on the early testing that we  
25 did and that they wanted us to shore up the database so

1 that we could complete it with the accuracy goals in  
2 mind and also to build whatever API we needed to build  
3 in the future to hook it up to their systems.

4 Q. And your notes from your meeting just one day  
5 before the critical date, what did those tell you about  
6 whether or not EZ Reader had been deployed?

7 A. Those notes told me at that meeting that I had  
8 a lot of questions still that were unresolved about  
9 deploying that application.

10 Q. And what does Exhibit 855, the May 13, 1996,  
11 e-mail tell you about whether or not EZ Reader had been  
12 deployed previously?

13 A. I'll have to look at that. Which one was it?

14 Q. Well, that's okay. Let's go even further out.  
15 Let's go to September, your project plan in September of  
16 '96.

17 What did that document tell you about whether  
18 it had actually been deployed previously?

19 A. It told me that it couldn't have been deployed  
20 since we didn't have the Lotus Notes API ready.

21 Q. All right.

22 MR. FENSTER: Nothing further, Your  
23 Honor.

24 THE COURT: Recross?

25 MR. VERHOEVEN: May I have one second to

1 talk with my co-counsel, please?

2 THE COURT: Yes.

3 (Pause in proceedings.)

4 MR. VERHOEVEN: Nothing further, Your  
5 Honor.

6 THE COURT: All right. May this witness  
7 be excused?

8 MR. FENSTER: Yes, Your Honor.

9 THE COURT: Any objection?

10 MR. VERHOEVEN: No, Your Honor.

11 MS. DOAN: No, Your Honor.

12 THE COURT: All right. You may step  
13 down.

14 Who will be your next witness?

15 MR. FENSTER: Your Honor, Bright Response  
16 calls Dr. Rhyne.

17 THE COURT: Okay. Is there an issue,  
18 Mr. Perlson?

19 MR. PERLSON: I think we can table it for  
20 now.

21 THE COURT: Proceed.

22 MR. FENSTER: Thank you, Your Honor.

23 VERNON THOMAS RHYNE, III, Ph.D., PLAINTIFF'S WITNESS,

24 PREVIOUSLY SWORN

25 DIRECT EXAMINATION

1 BY MR. FENSTER:

2 Q. Good morning, Dr. Rhyne.

3 A. Good morning, Mr. Fenster.

4 Q. Dr. Rhyne, can you state your full name for  
5 the record, please.

6 A. My full name is Vernon Thomas Rhyne, III. I  
7 go by Tom.

8 Q. And are you also sometimes known as Dr. Rhyne?

9 A. In formal situations such as these, I'm often  
10 referred to as Dr. Rhyne. I have a Ph.D.

11 Q. And what's that Ph.D. in?

12 A. It's in electrical engineering. I earned it  
13 at Georgia Tech in 1967. It's what today would be  
14 called computer engineering, but back then, the field of  
15 computer engineering hadn't really been formalized very  
16 well, and so it was in the Department of Electrical  
17 Engineering at Georgia Tech.

18 Q. And, Dr. Rhyne, what will you be testifying  
19 about in this case?

20 A. Today I'm going to be testifying about  
21 infringement and offering my opinions and the bases for  
22 those opinions as to why I believe that certain products  
23 of Google and Yahoo! infringe three of the claims of  
24 what we've been referring to as the Rice patent.

25 I may be brought back later in the trial to

1 talk about -- in response to some of the things that are  
2 going to be raised, I believe, by experts who represent  
3 the Defendants in what's commonly called rebuttal  
4 testimony, but I will not be doing that today.

5 Q. Okay. And, Dr. Rhyne, do you have an expert  
6 opinion as to infringement by the accused products in  
7 this case?

8 A. I do. I have formed that opinion.

9 Q. And what's a brief summary of that opinion?

10 A. I have found two products, one for Google --  
11 I'll use the term AdWords, and I'll explain as best I  
12 can what that is, and I found a product for Yahoo!  
13 that's called Sponsored Search, and I'll explain what  
14 that is.

15 And based on my comparison between those  
16 products, how they work, and the Claims 30, 31, and 33  
17 of the Rice patent, as those claims have been construed  
18 or interpreted or defined by Judge Everingham, I have  
19 found that there is infringement of those three claims.

20 Q. All right. Before we get to the details of  
21 your opinions on infringement, I'd like to talk a little  
22 bit about your background and experience and tell the  
23 jury a little bit about yourself.

24 So have you prepared slides for your  
25 presentation today?

1           A.     What you'll see, Ladies and Gentlemen, is a  
2 sequence of slides with one exception, and I'll point  
3 that slide out, that I personally sat down with the  
4 graphics people that work with your law firm and  
5 created.

6                     And so yes, these -- I intend them to be  
7 demonstrable slides that will assist me in explaining to  
8 the jury what the technology is, what the patent  
9 works -- how it works, and why I believe there's  
10 infringement.

11           Q.     And you have a set of these up at the table  
12 there?

13           A.     I have a set with me. I do.

14           Q.     All right. So what are the main parts of your  
15 presentation today?

16           A.     Well, I'm going to talk about just the general  
17 technology. You've heard comments about artificial  
18 intelligence and case and rules and things like that.  
19 I'm going to explain a general understanding of what the  
20 patent describes as what's commonly called its preferred  
21 embodiment.

22                     When you have a patent, you have to show at  
23 least one example of the best way you know to build the  
24 invention that you're setting forth.

25                     I'm going to then give an overview of the two



1 products, this AdWords product and this Sponsored Search  
2 product.

3           And then I'm going to go blow by blow through  
4 each and every limitation of the claims that are at  
5 issue here, including two additional claims that are not  
6 directly being asserted against Google and Yahoo!, and  
7 explain why I think there's infringement of those  
8 claims.

9           Q.     Okay.  You told us a little bit about your  
10 educational background, but during -- during your  
11 education, did you specialize in any particular area of  
12 technology?

13          A.     Once I began to figure out what it was -- I  
14 actually had started building computers while I was in  
15 high school.  I went to high school in La Marque.  It's  
16 a small town down near Galveston.

17                 And here in Texas, we have a science fair, and  
18 so back in 1958 and '59, I built a small computer and  
19 entered it in the science fair and did fairly well.

20                 When I went to college, surprisingly, I found  
21 out there weren't many courses on how to build  
22 computers.  This is in 1958, '59, but once I got to my  
23 master's degree and particularly by the time I got to my  
24 Ph.D., I was able to find courses that focused primarily  
25 on both computer science and computer hardware.

1           And so, you know, today I offer myself up  
2 generally as a computer engineer, but I'm also certainly  
3 a well-qualified electrical engineer with a good bit of  
4 experience in computer science as well.

5           Q.    Now, are you licensed as -- licensed as an  
6 engineer?

7           A.    I am. I have a professional registration here  
8 in Texas and have had that since 1969.

9           Q.    And are you a member of any professional  
10 organizations?

11          A.    Currently, I'm a member, and have been for a  
12 very long time, of the IEEE, which is the Institute of  
13 Electrical and Electronics Engineers. It's the largest  
14 professional society in the world, and I've been a  
15 member of that society -- institute since 1962, while --  
16 I got that right after I got out of college.

17               And I've been elected to a variety of  
18 positions. I was treasurer there for a couple of years.  
19 I was on the Board of Directors. And I also was on the  
20 Board of Directors of a subsociety called the IEEE  
21 Computer Society.

22               And I've just done a lot of service to the  
23 IEEE. It's nonpaid. It's what I guess you lawyers call  
24 pro bono. It's just where you volunteer your time.  
25 I've been all over the world doing work for the IEEE.

1           Q.    Now, I notice at the bottom of your slide, one  
2 of the things that you have is an IEEE life fellow.

3           A.    Uh-huh.

4           Q.    What is that?

5           A.    Well, you get to be a life member of the IEEE  
6 if you don't die. The sum of your age and the number of  
7 years you belong to the IEEE have to equal a hundred.  
8 And I think I hit that mark a few years ago.

9                   The fellow award is different, though. It's  
10 restricted to 2 percent of the membership of the  
11 organization, and it's an honorary award that you can't  
12 nominate yourself for. I didn't even know I had been  
13 nominated until I got a phone call once from a coworker  
14 of mine, and he said: Hey, you've been nominated and  
15 approved as a fellow.

16                   When you get that award, they always give  
17 what's called a citation, and it basically says: Here's  
18 the reason we think your work in the profession has been  
19 noteworthy.

20                   And mine says for my contributions to computer  
21 engineering and to computer engineering education,  
22 fields that I've been involved in for, as the second  
23 line says, almost 50 years.

24           Q.    Tell us about some of your industry work  
25 experience.

1       A.    I've worked with a variety of computer  
2 companies. I worked with Texas Instruments. I worked  
3 for Motorola. I worked for NASA right after I got out  
4 of college on the early Mercury programs. I did data  
5 acquisition on those projects.

6           And then in 1983, I left where I was teaching  
7 at A&M and went to Austin to work for a company with a  
8 very long name. I worked for the Microelectronics and  
9 Computer Technology Corporation, commonly known as MCC.

10          And it was an interesting place to work,  
11 because 13 other U.S. companies had gone together and  
12 formed MCC, and they pooled their money and a lot of  
13 their employees. They sent research engineers to Austin  
14 to work together to try to develop very leading-edge  
15 technology.

16          MCC had programs in computer-aided design,  
17 which is the one I worked in, designing integrated  
18 circuit, the little chips.

19          Next door was the artificial intelligence  
20 program. And we did a lot of cooperative work between  
21 our CAD program and the AI program. It had other  
22 programs in packaging of semiconductors and other  
23 things, but those are the areas that I've worked in in  
24 industry.

25       Q.    And can you tell us what kind of teaching

1 experience you have?

2       A.     Well, I was on the faculty of electrical  
3 engineering at Texas A&M for 18 years. I was on what's  
4 called the evening school faculty at the University of  
5 Texas after I moved to Austin.

6             UT teaches a lot of classes after 6:00 o'clock  
7 in the evening, so people who are working full time, as  
8 I was, can go get additional degrees, generally working  
9 on their master's degree or their Ph.D.

10            And I taught in the computer engineering part  
11 of the EE Department's evening school as a faculty  
12 member. Not a tenure track faculty member, but just a  
13 faculty member to be able to teach in that department.

14            I've also been on the faculty at Georgia Tech  
15 for a while while I was studying there and also at  
16 George Washington University.

17       Q.     And what's your current employment status?

18       A.     I do a lot of this kind of consulting work.  
19 I'm retired from Texas A&M. I draw insurance benefits  
20 from Texas A&M, but other than that, I just occasionally  
21 get asked to do this kind of expert witness work, and I  
22 do it.

23       Q.     Okay. And how long have you been doing  
24 consulting work as an expert witness?

25       A.     I think over 30 years. About 30 years ago, I

1 had somebody walk into my office while I was teaching at  
2 Texas A&M, and they were looking for an expert who had  
3 experience in a particular technology that I knew a lot  
4 about, and they wanted someone with a Texas accent,  
5 because they had a trial in Dallas.

6 And I said: I'm guilty on both counts. I  
7 know that stuff, and I certainly have the accent. And I  
8 did that case, and I figured: Well, I'll never do that  
9 again.

10 And then one of the attorneys who had been  
11 working in that case, about two years later, sometime in  
12 the late '70s, called me up to work on another case, and  
13 it's kind of been like that ever since.

14 I don't seek this kind of work, but I get  
15 probably two calls a week almost these days about  
16 somebody looking for an expert witness in a patent  
17 lawsuit.

18 Q. How do you decide which cases you're going to  
19 accept, which engagements you'll accept?

20 A. Well, I keep telling everybody these days I'm  
21 trying to cut down. I'm like somebody trying to quit  
22 smoking.

23 But I have a process I go through. When  
24 somebody calls me about a case, the first thing I ask  
25 about are who are the parties and who are the law firms

1 so that I don't end up in what is commonly called a  
2 conflict. I don't want to work for or against the same  
3 company at the same time or for or against the same law  
4 firm at the same time.

5           Then I ask them about the technology, and I  
6 always say: Send me the patents that are at issue,  
7 e-mail them to me. And I sit down and read them and try  
8 to understand, is it technology that I think I'm  
9 comfortable with being an expert, quote/unquote, in.  
10 And then I try to find out what the schedule is. Is it  
11 something that I have time to do? Is it something --  
12 occasionally -- I've been called a time or two when  
13 somebody needed an expert report written in two weeks,  
14 and I can't do that. I have to take my time to prepare  
15 my thoughts and prepare my opinions.

16           And usually, I try to look for cases that are,  
17 oh, a year out in the future or something like that and  
18 make sure they fit into my own personal schedule and to  
19 my schedule in my consulting work.

20           Q.    What kind of criteria do you use about -- do  
21 you go through -- do you use any other criteria in  
22 evaluating what cases you're going to take?

23           A.    Well, I'm not sure what you're asking about.  
24 I want to be absolutely sure that I have the technical  
25 skills to be able to do whatever it is that case is

1 about.

2           And I usually ask them to explain to me as  
3 much as they will, since we're not under confidentiality  
4 yet in these early discussions, as to what positions --  
5 are they the owner of the patent and they're trying to  
6 sue somebody; are they a defendant against being sued  
7 about what the patent is, because I've had a number of  
8 cases that once I began -- had begun to understand what  
9 it was they needed, I've had to say: I'm the wrong guy  
10 for this. I've got to back out of that.

11           And so I would prefer not to waste their time  
12 or my time at the beginning, and I just -- as much as  
13 they're willing to tell me, I try to understand what the  
14 issues in the case are going to be.

15           Q.    Now, have you authored any papers or books?

16           A.    I'm sure you've all heard publish or perish.  
17 During my years at A&M, I published 30 papers in what  
18 are called archived journals, and I published a  
19 textbook.

20                   It's the second thing up from the bottom here  
21 in italics. It was published by Prentice-Hall in 1973.  
22 Its title is: Fundamentals of Digital Systems Design.  
23 It's a book on how to design computer hardware.

24           Q.    And has that -- has that book been cited by  
25 any institutions?



1           A.     Sure.  It was adopted in its timeframe in  
2 about, oh, 40 or 50 universities around the world, as  
3 well as a good number of schools here in the United  
4 States, and it's also been cited, as I've seen a couple  
5 of times, by the U.S. Patent Office as a reference --  
6 for reference in a patent.

7                     And we'll see in a minute that when you get a  
8 patent, there's certain references that the Patent  
9 Examiner looked at.

10                    And interestingly enough, once when I did a  
11 search on my own name on the patent website, I popped my  
12 book up four or five times.  So it's been cited there.

13           Q.     Now, you've been hired as an expert in this  
14 case by Bright Response?

15           A.     I have.

16           Q.     And are you being compensated for your work on  
17 behalf of Bright Response?

18           A.     I am.  I'm being paid by the hour.

19           Q.     Okay.  And how much are you being compensated?

20           A.     I'm charging \$695 an hour for anything that I  
21 do in this case.  That's just the straight rate that I  
22 charge.

23           Q.     Okay.  And is that -- is that your normal  
24 hourly rate?

25           A.     Absolutely.  In fact, it's -- based on my

1 experience, it's about what people who have my level of  
2 experience and qualifications are charging for this kind  
3 of work.

4 Q. How did you arrive at that rate?

5 A. I'll say this with all due respect. One of  
6 the things I found out was how much the lawyers charged.  
7 And I also -- as I say, I know a lot of people who do  
8 this work, both in Texas and nationally.

9 And I know people who are less experienced  
10 than I -- you know, the first case I ever did back in  
11 the '70s, I had no idea what to charge.

12 I asked the attorney who walked in my office,  
13 I said: Well, what do you pay?

14 They said: We pay \$150 an hour.

15 And I said: Okay. That sounded pretty good.

16 And I've just gradually raised my rate over  
17 the years as I've gotten additional qualifications. You  
18 can see up here, I'm a patent agent. That's something  
19 that I've studied to become familiar with patents and  
20 how they work. And that's about what people charge who  
21 have my experience and qualifications.

22 Q. And when you had just a few cases under your  
23 belt, did you charge less?

24 A. A whole lot less.

25 Q. Now, is any of your compensation tied to the

1 results obtained in this case?

2 A. No. Whoever prevails, I'm going to get the  
3 same amount of money either way based strictly on the  
4 amount of time that I will spend working on this case.

5 Q. Now, you've been sitting in the courtroom, and  
6 as you've heard, this case involves computer technology  
7 and artificial intelligence.

8 Do you have any experience with that  
9 technology?

10 A. Yes, I do. Mainly at MCC, a little bit before  
11 that when I was teaching at Texas A&M, but at MCC, I  
12 mentioned that I worked in a program, the computer-aided  
13 design program, that was directly associated, next door,  
14 to the artificial intelligence program.

15 And it was impressive to me that some of the  
16 luminaries in artificial intelligence came to MCC, and a  
17 gentleman named Woody Bledsoe, who is, I believe,  
18 deceased now, but was just a very, very well-respected  
19 academic artificial intelligence expert, and a few other  
20 people who came in that brought real skill in that area.  
21 We drew on their skill in my computer-aided design  
22 program. In fact, we bought for our hardware the same  
23 kind of hardware that they were using in the artificial  
24 intelligence program.

25 It was specialized computer equipment that

1 implemented a computer language -- I'm going to  
2 pronounce this very carefully -- called LISP, L-I-S-P,  
3 which is the standard, at that time, computer language  
4 used by artificial intelligence, that artificial  
5 intelligence community.

6           And we developed all of our initial  
7 computer-aided design software in LISP using what were  
8 called LISP machines. And we primarily focused on  
9 rule-based, which we'll talk about some more.

10           We used rules to control the way designers did  
11 their job when they were designing integrated circuit  
12 chips so that we made sure that they took every step so  
13 that they -- when they got ready to make the actual  
14 chip, they had done all the testing that needed to be  
15 done before they went out and spent, you know, at that  
16 time, 50 to a hundred thousand dollars to make the very  
17 first wafer of those chips.

18           Later on while I was at MCC, I took over the  
19 position as the vice president of research and  
20 development for the whole software development group at  
21 MCC.

22           And in that job, I personally managed the  
23 rule-based work and a program in what's called Neural  
24 Networks, and that's an attempt to model some of the way  
25 that the brain organizes itself when it thinks.

1           And that's not exactly case-based work, which  
2 is the other thing we'll talk about, but it's pretty  
3 close to it.

4           In fact, we had a very interesting project.  
5 We were retained by Bank of America for their credit  
6 card studies in that there's a, as you know, fraudulent  
7 use of credit cards.

8           And they gave us a lot of data, a bunch of  
9 cases, where computer -- computer records of credit card  
10 purchases, some of which were fine, but some of which  
11 were fraudulent, and we used our Neural Network  
12 technology to learn how to sort those things out such  
13 that you could apply a new credit card purchase case to  
14 that Neural Network and believe with high reliability  
15 that that network could produce at its output okay or  
16 fraudulent.

17           And it was interesting that when we gave that  
18 prototype over to Bank of America, I was told -- I  
19 didn't see the data, but I was told by one of the  
20 researchers that within the first month of using our  
21 prototype, they saved enough fraudulent purchases, they  
22 identified them and blocked them, to pay for the  
23 contract.

24           So that was kind of a fun process. But I  
25 worked on that for about two years, primarily, rule base

1 and Neural Networks.

2 Q. Now, Dr. Rhyne, given your experience in  
3 artificial intelligence and with knowledge engines, do  
4 you feel qualified as an expert in artificial  
5 intelligence as applied to the Rice patent and the  
6 related prior art?

7 A. Yes, I do.

8 MR. FENSTER: Your Honor, at this time,  
9 we would like to offer up Dr. Rhyne as an expert in  
10 artificial intelligence as applied to the Rice patent  
11 and the related prior art.

12 MR. VERHOEVEN: No objection.

13 MR. ROOKLIDGE: No objection.

14 THE COURT: All right. The Court and the  
15 jury will hear his opinions.

16 MR. FENSTER: Thank you, Your Honor.

17 Q. (By Mr. Fenster) Have you prepared a slide  
18 summarizing the materials that you've used in --

19 THE COURT: Mr. Fenster, I should amend  
20 that to say that we will hear his opinions after the  
21 lunch recess. We'll break a little bit earlier today  
22 for lunch.

23 Ladies and Gentlemen, take until 1:15, as  
24 you ordinarily would. If you would be back just shortly  
25 before 1:15, it would help us get started on time.

1 Remember my prior instructions, and don't  
2 talk about the case. Have a nice lunch break.

3 LAW CLERK: All rise.

4 (Jury out.)

5 THE COURT: Step down.

6 All right. Y'all have a seat.

7 Mr. Verhoeven, this is my Miranda warning  
8 to you, sir, about violating my orders in limine, okay?  
9 You approached the bench appropriately on some areas but  
10 not on others. Now it's going to be a long week, I can  
11 assure, if that continues.

12 Do you understand what I'm saying?

13 MR. VERHOEVEN: Crystal clear.

14 THE COURT: All I ask is that you  
15 approach the bench, okay?

16 I'm not going to go further in this case  
17 with the instruction, other than the instruction I've  
18 already given the jury, because I'll just tell you, had  
19 you approached the bench, I would have been inclined to  
20 allow you to elicit that testimony, okay?

21 MR. VERHOEVEN: I apologize, Your Honor.

22 THE COURT: But it's going to be a  
23 long -- it's going to be a long week for both of us,  
24 sir, if that happens again, okay?

25 I don't want to get in the middle of this

1 case in front of the jury, but I'm not going to let you  
2 blow by my orders, okay?

3 MR. VERHOEVEN: Yes, Your Honor.

4 THE COURT: You've tried a case in front  
5 of me before.

6 MR. VERHOEVEN: Yes, Your Honor, and I  
7 don't want to take any time on how I interpreted it, but  
8 if you're interested, I could try to explain it.

9 THE COURT: Well --

10 MR. VERHOEVEN: I'll do my best, Your  
11 Honor. I hear you crystal clear.

12 THE COURT: You need to err in your  
13 interpretation on the side of caution, okay?

14 MR. VERHOEVEN: Yes, sir.

15 THE COURT: Yes?

16 MR. FENSTER: Your Honor, I understand  
17 that there are a few issues raised by Defendants  
18 regarding the demonstratives that might be heard by  
19 Dr. Rhyne. So we have a few issues to address.

20 And I'd also like to address the Court's  
21 interim order that we just got -- I got just a few  
22 minutes ago regarding the interim claim construction.  
23 I'd like to ask some clarification about that.

24 THE COURT: Okay.

25 MR. FENSTER: Do you want to do that now?



1 THE COURT: Well, we can do it now, sure.

2 MR. VERHOEVEN: I'm sorry, Your Honor.

3 We haven't seen it yet. I haven't seen a copy.

4 MS. DOAN: We don't have it.

5 THE COURT: Let's do it at 1:00 o'clock.

6 MS. DOAN: Thank you.

7 THE COURT: Y'all talk about it over the  
8 lunch hour. If you need my help, I'll be available here  
9 over the lunch hour.

10 LAW CLERK: All rise.

11 (Recess.)

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CERTIFICATION

I HEREBY CERTIFY that the foregoing is a true and correct transcript from the stenographic notes of the proceedings in the above-entitled matter to the best of my ability.

/s/\_\_\_\_\_  
SUSAN SIMMONS, CSR  
Official Court Reporter  
State of Texas No.: 267  
Expiration Date: 12/31/10

\_\_\_\_\_  
Date

/s/\_\_\_\_\_  
JUDITH WERLINGER, CSR  
Deputy Official Court Reporter  
State of Texas No.: 731  
Expiration Date: 12/31/10

\_\_\_\_\_  
Date